

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6)

A

(b)(6)

Respondent

FILED

Sep 27, 2022

ON BEHALF OF RESPONDENT: Austin M. Lucas, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Newark, NJ

Before: Goodwin, Appellate Immigration Judge; Gorman, Appellate Immigration Judge;
Liebmann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's decision dated June 27, 2019, denying his application for cancellation of removal pursuant to section 240A(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b). The Department of Homeland Security has not opposed the respondent's appeal. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied relief as a matter of discretion but found the respondent statutorily eligible for cancellation of removal, including finding exceptional and extremely unusual hardship to the respondent's minor son, who is autistic. INA § 240A(b)(1), 8 U.S.C. § 1229b(b)(1) (IJ at 7-8).¹ In assessing discretion, an Immigration Judge must "balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented in his (or her) behalf to determine whether the granting of . . . relief appears in the best interest of this country." *Matter of C-V-T*, 22 I&N Dec. 7, 11 (BIA

¹ The Immigration Judge found the respondent satisfied the requirements of 10 years continuous physical presence, good moral character, and does not have any disqualifying convictions (IJ at 6). In addition, the Immigration Judge determined the respondent, who has four United States citizen children in his custody, has a qualifying relative who would suffer exceptional and extremely unusual hardship resulting from the respondent's removal from the United States (IJ at 2, 6-7).

1998) (quoting *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978)). An Immigration Judge will consider equities such as family ties in the United States, duration of residence in the United States, work history, evidence of hardship to the respondent and his family, and evidence of rehabilitation where there is a criminal record. *Matter of C-V-T-*, 22 I&N Dec. at 11. These equities will be weighed against adverse discretionary factors such as the nature, recency, and seriousness of criminal violations and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident. *Matter of C-V-T-*, 22 I&N Dec. at 11.

We are unable to review the Immigration Judge's discretionary denial because it does not contain a sufficient analysis of equities against which to weigh adverse factors. While the decision outlined many negative factors in support of a denial, those factors were weighed against only "the social and humane considerations," which consisted of the support of the respondent's four children in the United States (IJ at 7-8). Such an analysis lacks positive discretionary factors and does not sufficiently weigh those factors, including that the Immigration Judge found exceptional and extremely unusual hardship to the respondent's youngest son, who has autism (IJ at 7). On appeal, the respondent argues that he has demonstrated numerous positive factors which were not addressed by the Immigration Judge in her finding of facts. Because the Board may not engage in fact-finding, we must remand the record so the Immigration Judge can make the necessary factual findings in the first instance and to properly weigh all negative and positive factors relevant to the exercise of discretion. *Matter of S-H-*, 23 I&N Dec. 462, 462 (BIA 2002) (limiting the Board's ability to make factual findings); *Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (stating that the Immigration Judge is "responsible for the substantive completeness of the decision"). The Immigration Judge should provide a thorough analysis of both equities and adverse discretionary factors in weighing her decision, including the hardship to the respondent's children. See, e.g., *Matter of Sotelo-Sotelo*, 23 I&N Dec. 201, 203 (BIA 2001) (requiring the Immigration Judge to "balance the positive and adverse matters to determine whether discretion should be favorably exercised. . .") (quoting *Matter of Marin*, 16 I&N Dec. 581, 585 (BIA 1978)).

Accordingly, we remand this matter to the Immigration Court for further proceedings and a new decision regarding the respondent's application for relief. In remanding, we express no opinion on the ultimate outcome of the proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996). The following order is entered.

ORDER: The appeal is sustained, and the record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.