

NOT FOR PUBLICATION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

Dec 28, 2022

ON BEHALF OF RESPONDENT: Lori K. Walls, Esquire

ON BEHALF OF DHS: Margaret LaDow, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Seattle, WA

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

Opinion by Appellate Immigration Judge Liebmann
Appellate Immigration Judge Gorman, see dissenting opinion

LIEBMANN, Appellate Immigration Judge

The respondent appeals the Immigration Judge's July 3, 2019, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b). The respondent has also submitted new evidence on appeal and previously filed a motion to remand. The Department of Homeland Security has filed a brief and motion in opposition. The record will be remanded for the entry of a new decision.

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 the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent conceded removability as charged (IJ at 2; Tr. at 3). The respondent sought cancellation of removal for non-permanent residents under section 240A(b) of the INA, 8 U.S.C. § 1229b(b) (IJ at 2; Exh. 2). The Immigration Judge denied the respondent's application (IJ at 11-17). The respondent now appeals. The sole issue on appeal is whether the Immigration Judge erred in finding that the respondent did not meet his burden to demonstrate exceptional and extremely unusual hardship to his qualifying relatives.¹ We will remand the record for further consideration of the evidence.

¹ At the time of the merits hearing, the respondent had two United States citizen children who are qualifying relatives (IJ at 5; Exh. 3 at 25-26). The respondent has submitted evidence that his third child was born on (b)(6) 2020 (Respondent's Mot. Mar. 26, 2020).

We note and the Immigration Judge's decision reflects that hardship to a non-qualifying relative may be considered to the extent that it causes hardship to the qualifying relatives. *See Matter of Recinas*, 23 I&N Dec. 467, 471 (BIA 2002) (finding that hardship to the respondent may also be considered to the extent it affects the degree of hardship to the qualifying relatives). The Immigration Judge found that the respondent's spouse previously suffered from an auto-immune disease that has resulted in difficulty maintaining employment (IJ at 7-8). As a result of car accidents, she suffers from back pain that limits her ability to work, as she cannot sit or stand for long periods of time and has difficulty lifting items (IJ at 8-9). The respondent's spouse was also abused by two uncles; she previously attempted suicide and does not trust anyone to care for her children, including her father, as he previously abused her mother (IJ at 9-10). Despite these extensive factual findings, the Immigration Judge did not analyze how the respondent's removal will impact his spouse's ability to care for the qualifying relative children. Accordingly, we will remand the record for further consideration of all evidence of hardship, in the aggregate, including to the qualifying relative children and to their mother to the extent it may result in additional hardship to them. *See Matter of Recinas*, 23 I&N Dec. at 472 (noting that hardship factors must be assessed in their totality).

Considering our remand, we will not reach the new evidence presented in the respondent's motions to remand (Respondent's Mot. Feb. 10, 2020, Mar. 26, 2020, June 8, 2020). On remand, the parties may supplement the record and the Immigration Judge may consider the respondent's newly proffered evidence, including the birth of his third child, his daughter's ongoing participation in special education, and the conditions in which his family in Mexico now live. We express no opinion as to the outcome of the case.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.