

NOT FOR PUBLICATION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

Mar 27, 2023

ON BEHALF OF RESPONDENT: Iliana N. Holguin, Esquire

ON BEHALF OF DHS: Claudia Ochoa, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, El Paso, TX

Before: Greer, Appellate Immigration Judge; Pepper, Temporary Appellate Immigration Judge;
Crossett, Temporary Appellate Immigration Judge¹

Opinion by Temporary Appellate Immigration Judge Pepper

PEPPER, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's July 29, 2019, decision denying his application for cancellation of removal for certain non-permanent residents under section 240A(b)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security requests a summary affirmance. The respondent's appeal will be sustained. The record will be remanded to the Immigration Judge for further proceedings.

The Immigration Judge denied the respondent's application for cancellation of removal, finding the respondent had not established that his qualifying relatives would suffer exceptional and extremely unusual hardship upon his removal to Mexico, and concluding the respondent does not merit relief as a matter of discretion (IJ at 7–11). See INA §§ 240(c)(4)(A)(ii), 240A(b)(1)(D), 8 U.S.C. §§ 1229a(c)(4)(A)(ii), 1229b(b)(1)(D). The issue before us is whether, on the record before us, the denial of the respondent's application was proper (Respondent's Br. at 6–18). We conclude it was not.

We begin with the Immigration Judge's discretionary denial. In making discretionary determinations, we weigh all adverse factors indicating the respondent's undesirability as a permanent resident against all countervailing favorable considerations and ask whether, on balance, the respondent's continued residence in the United States would be in the best interests of this country. *Matter of A-M-*, 25 I&N Dec. 66, 76–77 (BIA 2009); *Matter of Marin*, 16 I&N Dec. 581,

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

584 (BIA 1978) (listing applicable factors). We decide *de novo* whether the Attorney General's discretion should be favorably exercised, *see* 8 C.F.R. § 1003.1(d)(3)(ii), but we make that decision on the basis of the Immigration Judge's factual findings, which we review for clear error, *see* 8 C.F.R. § 1003.1(d)(3)(i), (iv).

The Immigration Judge found three adverse factors in the respondent's case. The first two are his decades-old criminal convictions. In 2002, the respondent plead guilty to assault and disorderly conduct under Arizona law, following an incident where he pushed his partner's mother while intoxicated; he received a 30-day suspended sentence and 1-year probation (IJ at 5, 10; Tr. at 51, 54; Exh. 2 at 5; Exh. 3, Tab E). In 2004, the respondent was arrested and convicted for driving under the influence; he was sentenced to 8 days in jail (IJ at 5, 10; Tr. at 42, 52–53; Exh. 2 at 5; Exh. 3 (criminal chart)).

These convictions are concerning. However, the resulting sentences were not severe; the respondent completed all mandatory classes associated with his sentencing orders; he has no other alcohol-related arrests and has not reoffended since 2004; and he is now able to control his alcohol consumption at-will; indeed, he has consistently worked as a delivery driver (IJ at 4–5, 10–11; Tr. at 42, 50, 54, 95; Exh. 4, Tab C; Exh. 5, Tab B). Under these circumstances, we afford the respondent's decades-old offenses little weight.

The third adverse factor is the respondent's 14-year use of a false green card and false Social Security number for employment (IJ at 5, 10–11; Tr. at 40–42, 50–51, 102–03; Exh. 3, Tab D; Exh. 4, Tab B; Exh. 6).² However, the record does not indicate the respondent used a fraudulent green card and Social Security number that belonged to a different person; i.e., potentially constituting identity theft. Absent any evidence to confirm such intentionally harmful behavior towards another person, we cannot conclude his use of false documents to work—coupled with his decades-old convictions—outweighs all of his positive factors.

Indeed, the respondent has several positive equities. He has lived in the United States since 2000; he is married and has three United States citizen children; he is the primary financial provider in his family and supports all of his children emotionally, two of whom appear to have documented learning disorders (IJ at 4–10; Tr. at 26–39, 43–49, 57–83, 85–91; Exh. 3, Tab C; Exh. 4, Tab A; Exh. 5, Tab A;³ Exh. 7, Tabs C–F). Upon our *de novo* review, the three adverse discretionary factors identified by the Immigration Judge do not outweigh the respondent's positive equities. Therefore, we will reverse the Immigration Judge discretionary finding.

² The Immigration Judge found the respondent used fraudulent documents to “purchase automobiles and rent homes” (IJ at 5). While the respondent testified that he “got a car, got a house, and was working many jobs” after obtaining a false Social Security number (Tr. at 50), the documentary evidence does not reflect that he was only able to purchase his car and enter into a rental agreement *because* of the false Social Security number (Exh. 3, Tab D at 86–102, 111–20; Exh. 4, Tab B at 12–15). On remand, the Immigration Judge may clarify her findings on this issue, if relevant.

³ For Exhibit 5, we refer to the respondent's documentary submission on September 10, 2018.

Next, the Immigration Judge found the respondent ineligible for cancellation of removal because he had not established that his qualifying relatives would suffer exceptional and extremely unusual hardship upon his removal to Mexico (IJ at 7–10). INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(b)(1)(D). The requisite hardship finding requires “the assessment of hardship factors in their totality, often termed a ‘cumulative’ analysis.” *Matter of Recinas*, 23 I&N Dec. 467, 472 (BIA 2002); see *Matter of Monreal*, 23 I&N Dec. 56, 64 (BIA 2001) (“[A]ll hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.”).

Here, the Immigration Judge evaluated the hardship to only one of the respondent’s qualifying relatives (IJ at 8). This was legal error and requires remand. On remand, the Immigration Judge should enter a new hardship determination, considering *all* hardship evidence relevant to *all* of the respondent’s qualifying relatives. The parties shall be allowed to present additional evidence regarding the respondent’s eligibility for relief, and whether he merits such relief in the exercise of discretion. In remanding, we do not opine on the ultimate outcome of these proceedings.⁴ The following orders will be entered.

ORDER: The appeal is sustained, and the Immigration Judge’s decision, dated July 29, 2019, is vacated.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.

⁴ Nothing in this order precludes the respondent from seeking post-conclusion voluntary departure on remand (Respondent’s Br. at 18–19). INA § 240B(b), 8 U.S.C. § 1229c(b).