

NOT FOR PUBLICATION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 29, 2023

ON BEHALF OF RESPONDENT: Patrick F. Valdez, Esquire

ON BEHALF OF DHS: Scott Yeung, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Liebowitz, Appellate Immigration Judge

LIEBOWITZ, Appellate Immigration Judge

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s July 12, 2019, decision, granting the respondent’s application for cancellation of removal for certain nonpermanent residents under section 240A(b)(1) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1229b(b)(1). The respondent, a native and citizen of Mexico, opposes the appeal. The appeal will be dismissed, and the record will be remanded for any required background checks.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, DHS only argues the Immigration Judge erred in concluding that the respondent’s removal would result in exceptional and extremely unusual hardship to his United States citizen son (IJ at 4-6; Notice of Appeal).¹ See INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(b)(1)(D); *Matter*

¹ DHS indicated in the Notice of Appeal that it would file a written brief in support of the appeal. Because DHS did not file such brief and did not explain the failure to do so within the time set for filing, the Board has authority to summarily dismiss the appeal. See 8 C.F.R. § 1003.1(d)(2)(i)(E). We will decline to summarily dismiss the appeal in this instance when the Notice of Appeal contains sufficiently specific reasons for the appeal. See *Nolasco-Amaya v. Garland*, 14 F.4th 1007, 1012 (9th Cir. 2021).

of *Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001). We will dismiss DHS' appeal.²

We have considered all of the parties' arguments and acknowledge that this is a close case in some respects. However, it rests largely on factual findings made by the Immigration Judge regarding the qualifying relative's mental health and the impact the respondent's removal will have on the qualifying relative (IJ at 4). See *Matter of Monreal*, 23 I&N Dec. at 63 (stating that any hardship a non-qualifying relative may experience is relevant insofar as it may affect the hardship to the qualifying relative). We review factual findings under the highly deferential clearly erroneous standard. The Immigration Judge's factual findings cannot be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder. See *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (internal citations omitted). Instead, the Board must affirm if those factual findings are a permissible view of the record. See *Cooper v. Harris*, 581 U.S. 285, 293 (2017); *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985).

In this case, we discern no clear error in the Immigration Judge's underlying findings of fact upon assessment of the evidence, including expert testimony regarding the mental health of the qualifying relative. Upon consideration of the Immigration Judge's factual findings, we decline to disturb his conclusion that the respondent met his burden of establishing his son would be subject to exceptional and extremely unusual hardship upon his removal to Mexico. Consequently, we will affirm the Immigration Judge's decision to grant cancellation of removal.

We will remand the record solely to allow DHS to complete any necessary background examinations and investigations. We observe that should the respondent again be subject to removal proceedings in the future, cancellation of removal may not be granted to him a second time. See INA § 240A(c)(6), 8 U.S.C. § 1229b(c)(6).

Accordingly, the following orders will be entered.

ORDER: DHS' appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

² DHS does not challenge the Immigration Judge's determination that the respondent merits a positive exercise of discretion (IJ at 6-8). Accordingly, we deem that issue waived. See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).