

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

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Respondent

FILED

Apr 05, 2023

ON BEHALF OF RESPONDENT: Zachary William Rivera Weiss, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Tucson, AZ .

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

Opinion by Temporary Appellate Immigration Judge Crossett

CROSSETT, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals from a March 2, 2021, Immigration Judge decision denying the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b).² We will sustain the respondent's appeal in part and remand for further proceedings.

We review 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 the respondent's cancellation of removal application for lack of good moral character and failure to demonstrate exceptional and extremely unusual hardship to a qualifying relative (IJ at 2-7). Upon our de novo review, we disagree with these conclusions.

Although this is a close case, when the hardships to the respondent's five qualifying relatives (IJ at 3-4; Tr. at 10-14) – her four United States children and her lawful permanent resident mother – are considered in the aggregate, we conclude that the respondent demonstrated exceptional and extremely unusual hardship. This case is similar to the situation of the respondent in *Matter of Recinas*, 23 I&N Dec. 467, 470-72 (BIA 2002). The respondent in *Recinas* had four United States citizen children and two Mexican citizen children, all of whom she was raising alone without any

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

² The Immigration Judge granted the respondent's request for voluntary departure (IJ at 7-8).

support after her divorce from the father of the United States citizen children. The respondent's lawful permanent resident mother watched the children while the respondent worked outside the home. The respondent had no remaining family in Mexico because her parents and siblings were in the United States lawfully, so she would not have had a family member to watch the children while she worked. The respondent's United States citizen children only spoke limited Spanish and did not read or write the language. *Id.*

Here, the respondent is the sole provider for herself, her four United States citizen children, and her lawful permanent resident mother, making \$250 a week as a house cleaner (IJ at 3-4; Tr. at 10-14). The respondent receives no financial or other help from the children's fathers, has not lived in Mexico for 15 years, and has helped provide her mother both with economic support and a place to live in the United States (IJ at 3-4; Tr. at 14-16). Both the respondent and her mother are generally in good health but take medicine for high blood pressure (IJ at 2, 4; Tr. at 9, 17). The respondent's mother currently lives with the respondent and takes care of the children while the respondent works outside the home (IJ at 4, 6; Tr. at 14, 26). While the respondent's three younger children are healthy and have no recorded developmental issues (IJ at 3, 6; Tr. at 9-10, 12), the respondent's teenage daughter has chronic liver disease which requires visits to the doctor several times a year, medications, and in the future, likely a liver transplant (IJ at 3; Tr. at 11, 18-19).

The respondent attended nursing school in Mexico and worked as a nurse in Mexico from 2003 to 2007 (IJ at 2; Tr. at 9). While the IJ found that there is insufficient evidence that medical care is not available to the daughter with a chronic liver condition, the respondent stated that she researched the availability of medical care in Mexico for her daughter, and testified that, if she resides in (b)(6), Mexico, the only medical care available is 12 hours travel from there and her daughter's medicine would cost \$120 a month (IJ at 4; Tr. at 14). We find speculative the Immigration Judge's opinion that the respondent's daughter could return to the U.S. for medical care and that the respondent's mother could facilitate her granddaughter's treatment (*see* IJ at 6-7). We conclude that this respondent is similarly situated to the respondent in *Recinas* and has demonstrated exceptional and extremely unusual hardship to her relatives when considered cumulatively.

We also will reverse the Immigration Judge's adverse good moral character determination. Contrary to the Immigration Judge's assessment, signing a false nonimmigrant visa application under penalty of perjury does not count as "false testimony" under INA § 101(f)(6), 8 U.S.C. § 1101(f)(6) (*see* IJ at 5). *See Matter of R-S-J-*, 22 I&N Dec. 863, 865 (BIA 1999). The respondent testified that she was not asked to raise her right hand to be sworn to tell the truth and was not so sworn (IJ at 2; Tr. at 37). DHS's related interview documents support this testimony because they do not show that the respondent was placed under oath by the consular officer (Exh. 4 at Tab B). While the respondent admitted that she told the interviewer the application contents were true and correct, this is not equivalent to admitting under oath that the contents were true even when the respondent told the interviewer that she would tell the truth (*see* IJ at 2; Tr. at 33-34, 37). *See Matter of R-S-J-*, 22 I&N Dec. at 865.

Furthermore, as the respondent correctly points out, a request for cancellation of removal is a "continuing" application, and the period for assessing the statutory requirement for good moral

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character extends back from the entry of a final administrative order (Respondent's Br. at 8 n.1). *Matter of Ortega-Cabrera*, 23 I&N Dec. 793, 795-97 (BIA 2005). The respondent's decision to verbally verify the contents of her visitor visa application to an immigration official even though she knew it contained falsehoods occurred on (b)(6) 2012 (IJ at 2, 5; Tr. at 24-25, 32-35; Respondent's Br. at 8 n.1). This puts the respondent's action outside the 10-year window for good moral character.

The respondent's conscious decision to try to obtain a nonimmigrant visa by fraud is a very serious negative discretionary factor. However, it needs to be balanced against the respondent's substantial equities. Thus, we will remand the record for the Immigration Judge to make additional findings of fact as relevant and weigh the respondent's equities and negative factors to determine whether she warrants cancellation of removal as a matter of discretion. We express no present opinion as to that question.³

Accordingly, the following orders will be issued.

ORDER: The respondent's appeal is sustained as to whether she demonstrated 1) exceptional and extremely unusual hardship to a qualifying relative and 2) good moral character.

FURTHER ORDER: The record is remanded for further proceedings consistent with this opinion, and for the issuance of a new decision.

³ We note that the respondent has offered proof of payment of the requisite bond for voluntary departure. 8 C.F.R. § 1240.26(c)(3). The Immigration Judge may reinstate this form of relief as appropriate.