

00000053038
NOT FOR PUBLICATION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 08, 2022

ON BEHALF OF RESPONDENT: Daniel R. Black, Esquire

ON BEHALF OF DHS: Jeffrey D. Clark, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Salt Lake City, UT

Before: Baird, Appellate Immigration Judge; Goodwin, Appellate Immigration Judge; Greer,
Appellate Immigration Judge

Opinion by Appellate Immigration Judge Baird

BAIRD, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated June 28, 2019, denying his application for cancellation of removal for certain nonpermanent residents pursuant to section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and granting his application for voluntary departure pursuant to section 240B(b)(1) of the Act, 8 U.S.C. § 1229c(b)(1). The Department of Homeland Security opposes the appeal. The appeal will be sustained.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's application for cancellation of removal solely on the basis that he did not meet his burden to demonstrate that his removal would result in exceptional and extremely unusual hardship to a qualifying United States citizen or lawful permanent resident relative.¹ See section 240A(b)(1)(D) of the Act. Pursuant to our de novo review over questions of law, we disagree.

The respondent's qualifying relatives are his two United States citizen children, who were aged (b) and (b) at the time of the June 28, 2019, hearing (IJ at 3). The respondent's third child, a native

¹ The parties agreed that the respondent satisfied the remaining statutory requirements for cancellation of removal under section 240A(b)(1) of the Act (IJ at 2).

A (b)(6)

and citizen of Mexico who was aged (b)(6) at the time of the hearing, is currently present in the United States pursuant to the Deferred Action for Childhood Arrivals (DACA) program (Exh. 4 at 5). The respondent's wife does not have lawful immigration status in this country (IJ at 2; Tr. at 15).

The respondent presented evidence that his (b)(6) daughter began experiencing depression, anxiety, and emotional breakdowns following his encounter with immigration officials and the subsequent immigration proceedings (IJ at 3). The respondent's daughter takes several medications and attends therapy (IJ 3-4; Tr. 16-18; Exh. 4 157-176). The record reflects that she has a documented history of self-harm and suicidal ideation (IJ at 4; Tr. at 18; Exh. 4 157-176). The Immigration Judge found that the respondent's daughter would suffer trauma if she remains in the United States upon his removal or accompanies him to Mexico (IJ at 4). Upon de novo consideration of all the relevant factors and evidence, including the extent and severity of the respondent's daughter's mental health issues and high risk of self-harm, we conclude she would suffer exceptional and extremely unusual hardship should the respondent be removed to Mexico. *See, e.g., Matter of Andazola*, 23 I&N Dec. 319, 321 (BIA 2002) (holding that an applicant for cancellation of removal under section 240A(b) of the Act must demonstrate hardship to his or her qualifying relatives that is "substantially different from, or beyond, that which would normally be expected" from the removal of a close family member) (quoting *Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001)). As such, we conclude that the respondent is statutorily eligible for and deserving of cancellation of removal in the exercise of discretion.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained, and the Immigration Judge's January 28, 2019, decision is vacated.

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).