

Falls Church, Virginia 22041

File: A (b)(6) – Los Angeles, CA

Date:

JUL 11 2017

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Joubin Nasseri, Esquire

APPLICATIONS: Cancellation of removal under section 240A(b) of the Act; voluntary departure

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's November 21, 2016, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Immigration Judge found that the respondent did not establish the requisite hardship to his qualifying relative and further determined that the respondent did not merit relief as a matter of discretion. The appeal will be sustained in part and the record will be remanded to the Immigration Judge.

We review findings of fact, including credibility determinations, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, including whether the parties have met the relevant burden of proof, and issues of discretion 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, in part, on the grounds that the respondent did not establish that he warranted relief as a matter of discretion (I.J. at 6). While we do not condone the respondent's behavior with respect to the adverse actions noted by the Immigration Judge, we conclude that the record does not support a discretionary denial. *See Matter of C-V-T*, 22 I&N Dec. 7, 11 (BIA 1998) (finding that the Court "must balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented on his behalf to determine whether the granting of...relief appears in the best interest of this country.").

With respect to hardship, the Immigration Judge determined that the respondent's United States citizen son would not suffer the requisite hardship in the event of the respondent's removal to Mexico (I.J. at 2, 5). The record also establishes that the respondent is married to a United States citizen; however, the Immigration Judge did not consider the respondent's spouse as a qualifying relative in his decision (I.J. at 2; Tr. at 34). We therefore find it appropriate to remand the record to the Immigration Judge for the entry of a new decision. On remand, the Immigration Judge should consider the hardships that each of the respondent's qualifying relatives will suffer in the event that the respondent is removed to Mexico, and determine whether the hardship rises to the level of exceptional and extremely unusual. On remand, the parties may update the record, as necessary. We express no opinion on the ultimate outcome of the case. Accordingly, the following order will be entered.

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ORDER: The appeal is sustained in part and the record is remanded to the Immigration Judge for entry of a new decision.



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