

Falls Church, Virginia 22041

File: A (b)(6) – Batavia, NY

Date:

AUG – 2 2017

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eva H. Yung, Esquire

ON BEHALF OF DHS: J. Christopher Moellering
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(b)(1) of the Act

The respondent, a native and citizen of Mexico, appeals the decision of the Immigration Judge, dated March 10, 2017, denying his request for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1) (2017), and ordering his removal from the United States.¹ The Department of Homeland Security (“DHS”) is opposed to the respondent’s appeal. The respondent’s appeal will be sustained. As eligibility for relief has been established, the record will be remanded for the updating of the required background checks.

We review the 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) (2017). 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). It is the respondent’s burden to establish eligibility for relief from removal. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d).

Upon de novo review, we conclude that the respondent has established that his removal from the United States will result in exceptional and extremely unusual hardship to his United States citizen child. Section 240A(b)(1)(D) of the Act. Generally, where a child will be left with a parent in the United States upon the other parent’s removal from this country, it is reasonable to assume that the child will be cared for by the remaining parent. *Matter of Calderon-Hernandez*, 25 I&N Dec. 885, 886 (BIA 2012). However, in this case, the respondent has presented evidence that his child’s mother suffers from significant medical issues. Since the time of the respondent’s detention, the overall situation of the child has vastly deteriorated. It does not appear that, despite receiving an eviction notice, the relatives of the child’s mother are willing and able to assist her. Efforts to receive government assistance have been unsuccessful. Overall, while we consider this to be a very close case, we conclude that the respondent has sufficiently established that he meets the exceptional and extremely unusual hardship standard. *Matter of Recinas*, 23 I&N Dec. 467

¹ The respondent is subject to removal from the United States because he is an alien who is present in this country without being admitted or paroled by an immigration officer or who arrived at any time or place other than as designated by the Attorney General (IJ at 1-3). Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i).

(BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001). The Immigration Judge found the respondent otherwise eligible for cancellation of removal and the DHS conceded as much below.

For the reasons set forth above, the following orders are entered.

ORDER: The respondent's appeal is sustained.

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).



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