

Falls Church, Virginia 22041

File: A (b)(6) – Los Angeles, CA

Date:

AUG – 3 2017

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Fabian C Serrato, Esquire

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

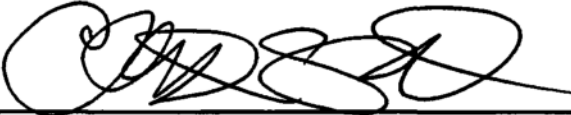
The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's September 8, 2016, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Department of Homeland Security (DHS) has filed no reply to the appeal. The appeal will be sustained.

Upon de novo review, given the learning disability of the respondent's youngest daughter, who is receiving special education services, we find that the respondent has established the requisite hardship for cancellation of removal.

Accordingly, the respondent's appeal will be sustained and the record will be remanded for the purpose of completing the requisite background checks.

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 giving the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, for further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD

Board Member Patricia A. Cole respectfully dissents. I agree with the Immigration Judge that the respondent does not qualify for cancellation of removal because he did not establish that his removal would result in exceptional and extremely unusual hardship to his qualifying relatives. Although the respondent's youngest child does receive special education, the evidence does not indicate that the learning issues are severe (I.J. at 4-5; Tr. at 33, 38-39, 45-48; Exh. 2). I disagree with the majority, as I find that the level of hardship falls short of the exceptional and extremely unusual standard set forth in section 240A(b) of the Act. *See Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002).