



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Mark, Eric M
Law Office of Eric M. Mark
201 Washington St.
Newark, NJ 07102**

**DHS/ICE Office of Chief Counsel - ELZ
625 Evans Street, Room 135
Elizabeth, NJ 07201**

Name: G [REDACTED] O [REDACTED], A [REDACTED] V [REDACTED] ... A [REDACTED]-968

Date of this notice: 5/21/2020

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Swanwick, Daniel L.

User team: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

Falls Church, Virginia 22041

File: A-968 – Elizabeth, NJ

Date: MAY 21 2020

In re: A V G O a.k.a.

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eric M. Mark, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture; cancellation of removal

The respondent, a native and citizen of Ecuador, has appealed from an Immigration Judge's December 11, 2019, decision denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1).¹ The Department of Homeland Security has not filed a response to the respondent's appeal. The record will be remanded for further proceedings.

This Board reviews the Immigration Judge's factual findings, including credibility findings and predictions as to the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge held that the respondent did not establish that his removal would cause exceptional and extremely unusual hardship to his sole qualifying relative: his United States citizen daughter who was 14 years old at the time of the hearing (IJ at 6-9; Tr. at 85). The respondent argues on appeal that the Immigration Judge erred by failing to consider his daughter's credible testimony as sufficient evidence of her suicidal ideation and minimized her suffering as "emotional issues" and "depression symptoms." He also argues that the Immigration Judge erred by not following the three-step inquiry for corroborating evidence required by the United States Court of Appeals for the Third Circuit in *Abdulai v. Ashcroft*, 239 F.3d 542 (3d Cir. 2001).

We conclude that the Immigration Judge erred by discounting the daughter's testimony that since her father has been detained, she has had daily thoughts of harming herself and that therapy sessions have not helped with these thoughts of harm (Tr. at 86, 90). In addition, the respondent's wife testified that their daughter has told her she does not want to live anymore (Tr. at 71). A letter from Clear Conscience Counseling generally states that J- has undergone a psychological evaluation and that counseling sessions will address her anxiety and depression symptoms (Exh. 6I). The Immigration Judge, however, should not have disregarded the daughter's testimony that she has daily thoughts of harming herself, or her mother's testimony that the daughter does

¹ The respondent has not challenged on appeal the Immigration Judge's denial of asylum, withholding of removal, and protection under the Convention Against Torture. Thus, the respondent has waived any challenge to the denial of such relief. *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190 n.2 (BIA 2018).

not want to live. *Quinteros v. Att'y Gen. of U.S.*, 945 F.3d 772, 786 (3d Cir. 2019). This credible testimony supports the respondent's argument that the hardship to his daughter is not simply the type of emotional issue that many teenage daughters may suffer due to separation from a father who is in custody (Respondent's Br. at 7-8; *see* IJ at 7). We conclude that a remand is necessary for further findings of fact regarding the issue of the daughter's mental health. Upon remand, the Immigration Judge should also reassess the financial hardships to the respondent's daughter as well as the effect the financial hardship resulting from his removal will have on her mental health. Upon remand, the parties should have the opportunity to submit new evidence relevant to the issue of hardship or with regard to any other relief for which the respondent may be eligible.

Accordingly, the following order is entered.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD