



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*

**STEVENS, AMANDA J
STEVENS & GRANADOS, PLLC
307 N. 3RD ST
STE 3
YAKIMA, WA 98901**

**DHS/ICE Office of Chief Counsel - SEA
1000 Second Avenue,
Suite 2900
Seattle, WA 98104**

Name: A [REDACTED] -A [REDACTED], A [REDACTED]

A [REDACTED] -326

Date of this notice: 4/14/2020

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:
O'Connor, Blair**

**Sharifm
Userteam: Docket**

**For more unpublished decisions, visit
www.irac.net/unpublished/index**

RL

Falls Church, Virginia 22041

File: A-326 – Seattle, WA

Date: APR 14 2020

In re: A-A-A-

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Amanda J. Stevens, Esquire

ON BEHALF OF DHS: Margaret LaDow
Assistant Chief Counsel

APPLICATION: Cancellation of removal

On March 5, 2018, an Immigration Judge denied the respondent's application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and granted the respondent's request for post-conclusion voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b).¹ The respondent, a native and citizen of Mexico, filed a timely appeal. The respondent also submitted new evidence of hardship on appeal, which we will construe as a motion to remand. The appeal will be dismissed. The record will be remanded.

We review an Immigration Judge's findings of fact, including findings regarding witness credibility and what is likely to happen to the respondent, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

To be eligible for cancellation of removal, an applicant must establish, among other requirements, that "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." Section 240A(b)(1)(D) of the Act, 8 U.S.C. § 1229b(b)(1)(D). Our decisions in *Matter of J-J-G-*, 27 I&N Dec. 808 (BIA 2020); *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); and *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), examine the issue of what constitutes exceptional and extremely unusual hardship.

The respondent's qualifying relatives are his United States citizen daughter, P-326, and United States citizen son, C-326, who were 12 years old and 7 months old, respectively, at the time of the hearing (IJ at 3; Tr. at 32, 34, 92-93). The respondent's wife and oldest daughter, A-326, are not qualifying relatives (IJ at 3, 6, 8; Tr. at 28, 30). The respondent testified at the hearing that the children were in good health, and Paloma did well in school (IJ at 3, 8; Tr. at 32-33, 35). He

¹ The respondent provided evidence of payment of the voluntary departure bond.

also stated that the family would relocate to Mexico with him if he is removed, although his wife testified that she wanted the family to stay in the United States (IJ at 4, 9; Tr. at 45, 94-95).

Regardless of whether the qualifying relatives stay in the United States or relocate to Mexico, we affirm the Immigration Judge's conclusion that the emotional and economic hardships would not be so uncommon or severe when compared with those experienced by other, similarly-situated, individuals that they may fairly be characterized as "exceptional and extremely unusual" in the sense intended by Congress (IJ at 9-10). *See Matter of J-J-G-*, 27 I&N Dec. at 814; *Matter of Andazola*, 23 I&N Dec. at 322, 324; *Matter of Monreal*, 23 I&N Dec. at 59, 65. In making this determination, we note that: (i) the respondent's children are bilingual; (ii) the respondent could sell his home and other personal property that could be used to help support his family or to relocate to Mexico; and (iii) the respondent has family in Mexico and in the United States who may be able to help the qualifying relatives (IJ at 9-10; Tr. at 39, 56-58, 104).

On appeal the respondent submitted evidence that his oldest daughter, A, has been diagnosed with "ITP Secondary to a[n] Autoimmune disease" for which "she has undergone numerous hospital stays due to recurrent bleeding and low platelet counts" (Respondent's Br. at 3). He provided a June 18, 2018, letter from a doctor from the Pediatric Hematology/Oncology Clinic of Sacred Heart Children's Hospital. The doctor indicates that A's condition is life-threatening and required two extended hospital stays to address "recurrent bleeding symptoms" (Respondent's Br., Attached Document). This is a substantial change since the respondent's July 11, 2016, merits hearing during which he testified that A was in good health (IJ at 3; Tr. at 30-31, 103). We will construe the submission of new evidence on appeal as a motion to remand, which is treated similarly to a motion to reopen. *Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992); 8 C.F.R. § 1003.2(c).

We recognize that A is not a qualifying relative. Given the evidence of the severity of A's medical condition, however, we conclude that a remand is warranted. On remand, the Immigration Judge should make findings of fact regarding A's medical condition and its impact on the hardship to the qualifying relatives if the respondent is removed. *See Matter of Recinas*, 23 I&N Dec. at 472 (noting that the Immigration Judge should consider the total impact of departure on the qualifying relatives, including the indirect impacts resulting from hardship to non-qualifying relatives). The Immigration Judge should give the respondent an opportunity to update the record regarding A's medical condition, including the severity of the condition, the prognosis, and any treatment plans. *See Matter of J-J-G-*, 27 I&N Dec. at 812.

Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: The motion to remand is granted.



FOR THE BOARD