U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: L[redacted] A[redacted], D[redacted]

A [redacted]-606

Date of this notice: 5/24/2019

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:
Morris, Daniel
Mann, Ana
Kelly, Edward F.

Userteam: Docket

File: A[redacted]-606 – New York, NY Date: MAY 24 2019

In re: D[redacted] L[redacted] A[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Linda Kenepaske, Esquire

APPLICATION: Cancellation of removal under section 240A(b); remand

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's January 16, 2018, 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). In addition, the respondent has submitted a motion to remand. The appeal from the denial of his application for cancellation will be dismissed. However, the motion to remand will be granted.

On appeal, the respondent challenges the Immigration Judge's determination that he did not establish that his removal would result in exceptional and extremely unusual hardship to either of his two United States citizen children, who were ages 20 and 17 at the time of the merits hearing (IJ at 3). While we recognize that by accompanying the respondent to Mexico, his children will be separated from friends and family in the United States and may have fewer educational and economic opportunities, we agree with the Immigration Judge that the respondent has not established that his children would suffer hardship substantially beyond that which ordinarily would be expected to result from a family member's removal from the United States. *See Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002) (discussing exceptional and extremely unusual hardship standard); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *compare Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).

The respondent is young, healthy, skilled as an electrician, able to maintain employment, and he has not established that he would be unable to contribute to his children's financial support in Mexico (IJ at 4; Tr. at 20). In addition, the respondent's older qualifying relative child is healthy, trained as an electrician, able to maintain employment, and the respondent has not established that his child would be unable to help support himself and his qualifying relative sibling in Mexico (IJ at 6; Tr. at 34). Moreover, the children have family ties to Mexico that include their grandparents (IJ at 13; Tr. at 18, 39).

Furthermore, the respondent's children may be required to improve their proficiency in the Spanish language, which has not been shown to be outside of their capability (IJ at 14; Tr. at 36-37). In addition, the respondent testified that his younger child aged 17 at the time of the Immigration Judge's decision, receives speech therapy, and the respondent is concerned that the child would not be able to receive speech therapy in Mexico (IJ at 7; Tr. at 36).

Like the Immigration Judge, we conclude that, considering the factors of this case cumulatively, the respondent has not demonstrated that either of his children will suffer exceptional and extremely unusual hardship if they accompany him to Mexico. Hence, the respondent is ineligible for cancellation of removal.

Turning to his motion, the respondent has submitted evidence establishing that he is the beneficiary of an approved Petition for Alien Relative (Form I-130) that his United States citizen daughter filed on his behalf.[1] He further states that his United States citizen son is currently serving in the Army National Guard, which renders the respondent eligible to apply for parole in place status. He contends that he would be eligible for adjustment of status pursuant to section 245 of the Act, 8 U.S.C. 1255, if he is granted parole in place status. The respondent requests that the Board remand these proceedings to allow him to pursue his application for lawful permanent resident status in the United States. The Department of Homeland Security has not filed an opposition to the respondent's motion to remand. In light of the foregoing, the respondent's motion will be granted.

Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: The motion to remand is granted.

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

FOR THE BOARD

[1] The respondent's daughter is not a qualifying relative in these proceedings (IJ at 3).