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

Miles, Brian Joseph
MILES & MILES PLC
67 N. Walnut
Mount Clemens, MI 48043

DHS/ICE Office of Chief Counsel - DET
333 Mt. Elliott St., Rm. 204
Detroit, MI 48207

Name: D[redacted]-G[redacted], V[redacted] **A [redacted]-267**

Date of this notice: 10/26/2018

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:
Greer, Anne J.
Wendtland, Linda S.
Donovan, Teresa L.

M[illegible]
Userteam: Docket

File: A[redacted]-267 – Detroit, MI

Date: OCT 26 2018

In re: V[redacted] D[redacted]-G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brian J. Miles, Esquire

ON BEHALF OF DHS: Theresa Bross
Assistant Chief Counsel

APPLICATION: Cancellation of removal; voluntary departure

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's decision dated September 15, 2017, denying his applications for cancellation of removal for certain nonpermanent residents pursuant to section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and voluntary departure pursuant to section 240B(b)(1) of the Act, 8 U.S.C. § 1229c(b)(1).

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including issues of law, judgment, or discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondent had testified credibly on some but not all issues and denied the respondent's application for cancellation of removal on the basis that he did not meet his burden of demonstrating that his removal would result in exceptional or extremely unusual hardship to a qualifying United States citizen or lawful permanent resident relative. *See* section 240A(b)(1)(D) of the Act. The Immigration Judge also found the respondent ineligible for cancellation of removal and voluntary departure because he did not meet his burden of showing that he has been a person of good moral character during the relevant period of time. *See* sections 240A(b)(1)(B) and 240B(b)(1)(B) of the Act.

Considering first whether the respondent has established exceptional and extremely unusual hardship to his qualifying relatives, the respondent has four United States citizen children. The Immigration Judge concluded that although all of the respondent's children are significantly challenged, the respondent's contribution is almost exclusively financial and, therefore, his removal would not constitute exceptional and extremely unusual hardship to them. We disagree.

The Immigration Judge is correct that the respondent contributes financially to his children. Indeed, the children's mother is not able to work at all because of the children's needs (IJ at 4; Tr. at 45, 59). The respondent's two oldest children have learning disabilities, and his second child's disabilities are severe (IJ at 3; Tr. at 33-37). She was functioning at a first grade level at the time of the hearing, although she was 13 years old (IJ at 3; Tr. at 35). The respondent's third child is autistic, receives therapy, and takes medication to control behavioral episodes which include

threats of suicide (IJ at 3; Tr. at 37-42). The respondent's youngest child is also developmentally delayed, has severe asthma, and her feet are "twisted" (IJ at 3; Tr. at 42-43). The respondent pays more than $1,000 each month in child support, and the children are covered under his employer's health insurance plan (IJ at 3; Tr. at 33). In addition to the financial support, both the respondent and his ex-wife testified that he visits the children in Michigan 3-4 times a year and speaks regularly with them by telephone (IJ at 3-4; Tr. at 60, 99). Although the Immigration Judge concluded that the respondent's support was merely financial, the respondent does provide emotional support to his children. In addition, his financial support is critical, given his children's needs. His contributions allow the children's mother to care for the children, and they provide insurance for the children.

Under these circumstances, the respondent has established that his qualifying relatives will experience exceptional and extremely unusual hardship if the respondent is removed. *See Matter of Recinas,* 23 I&N Dec. 467 (BIA 2002) (hardship established where respondent was the sole support for four United States citizen children, the children had no relatives in Mexico, were unfamiliar with the Spanish language, and it was established that respondent was the sole financial and familial support for her total of six children).

Considering next whether the respondent has established good moral character, the Immigration Judge appears to have relied on the catch-all provision of section 101(f) of the Act, 8 U.S.C. § 1101(f). An evaluation of good moral character under section 101(f) requires consideration of all factors relevant to determining a person's moral character. *See Matter of U-,* 2 I&N Dec. 830, 831 (BIA, A.G. 1947) (stating that good moral character does not require moral excellence but is the measure of a person's natural worth derived from the sum total of all his actions in the community). The Immigration Judge appropriately considered the respondent's 2015 conviction for driving under the influence and his lack of evidence regarding payment of taxes. She did not, however, consider all of the evidence of record regarding the respondent's good moral character. For example, the respondent testified that he had consistently paid his taxes since he began working and that he had completed most of his sentence for the DUI conviction, i.e., 12 classes, therapy, and 48 hours of community service (Tr. at 91, 100).[1] In addition, both he and his wife testified that this was his first infraction and that he does not have a drinking problem (Tr. at 55, 91, 124).

In addition, the respondent and his ex-wife both testified that the respondent had left Michigan for Colorado for a better job, that he pledged to continue to support the family and, for the most part has done so, and that he has a close relationship with his children in addition to providing financial support (IJ at 3-6; Tr. at 45, 57, 77, 112).[2] Under these circumstances, we agree with the respondent that the Immigration Judge mischaracterized the respondent's actions as "abandoning"

[1] The respondent also was sentenced to 24 months of probation, but that term had not ended at the time of the hearing.

[2] The respondent testified that he had not been able to pay his child support for 6 weeks when he was injured and was not working, but he notified the court and did not know at the time of the hearing whether he owed any back payments (Tr. at 97-98, 116-19). His ex-wife testified that she believed he was current on his child support payments (IJ. at 3-4, 5-6; Tr. at 60-62).

his ex-wife and children (IJ at 9). In addition, contrary to the Immigration Judge's indication that the respondent had not provided a "legitimate" reason for working in Colorado, the respondent testified that his cousin lived in Colorado and had helped him obtain the job and that he had nearly doubled his salary (IJ at 9; Tr. at 76-77, 113).

Considering all of the factors relating to the respondent's good moral character, we conclude that he has established that he has been a person of good moral character for the past 10 years. *See Matter of K-*, 3 I&N Dec. 180, 182 (BIA 1949) (indicating that that an alien's good moral character should not be destroyed by a single lapse and that it should be determined by considering the person's actions generally and the regard in which he or she is held by the community as a whole). Similarly, the exercise of discretion requires a balancing of all positive and negative factors in the record, and we conclude that the respondent has established that he merits relief in discretion. *See Matter of Arguelles*, 22 I&N Dec. 811 (BIA 1999).

The record establishes that the respondent is otherwise eligible for relief. Therefore, the record will be remanded for completion of the required background checks.

ORDER: The appeal of the Immigration Judge's denial of cancellation of removal 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).

Teresa L Donovan

FOR THE BOARD