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

Vanderstreet, Michele McGuire
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303

Name: B[redacted]-G[redacted], H[redacted]... **A [redacted]-613**

Date of this notice: 4/25/2019

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:
Mann, Ana
Adkins-Blanch, Charles K.
Kelly, Edward F.

Userteam: Docket

File: A[redacted]-613 – Atlanta, GA

Date: APR 25 2019

In re: H[redacted] B[redacted]-G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michele Vanderstreet, Esquire

ON BEHALF OF DHS: Connie K. Yoon
Assistant Chief Counsel

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

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's August 17, 2017, 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 Immigration Judge found that the respondent did not establish the requisite hardship to his qualifying relatives and further determined that the respondent did not merit relief as a matter of discretion. The appeal will be sustained and the record will be remanded to the Immigration Judge.

We review findings of fact, including credibility determinations, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, including whether the parties have met the relevant burden of proof, and issues of discretion under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's cancellation of removal application, in part, on the grounds that the respondent did not establish that he warranted relief as a matter of discretion (IJ at 11). While we do not condone the respondent's behavior with respect to the adverse action noted by the Immigration Judge, in particular his sole conviction for driving under the influence in 2012, we conclude that the record does not support a discretionary denial. *See Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998) (finding that the Court "must balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented on his behalf to determine whether the granting of...relief appears in the best interest of this country.").

Concerning hardship, to determine whether the respondent's removal would result in exceptional and extremely unusual hardship to a qualifying relative, we examine the hardship factors in their totality. *Matter of Recinas*, 23 I&N Dec. 467, 472 (BIA 2002). Upon de novo review of the legal question presented, we conclude that the respondent has shown the requisite hardship. As the Immigration Judge found, the respondent's qualifying relatives are his United States citizen spouse and twelve-year-old daughter from a prior relationship (IJ at 3; Tr. at 95, 97). The record establishes that the respondent's spouse and child would not accompany him to Mexico in the event of his removal (IJ at 5; Tr. at 129).

The respondent lives with his spouse, daughter, and three grandchildren, ages 4 years, 3 years, and 8 months, respectively, at the time of the hearing (IJ at 4; Tr. at 100-101). The grandchildren are the children of the respondent's wife's daughter; however, the respondent and his wife were granted temporary custody of the children after the children were abandoned by their mother (the wife's daughter) and their father was deported (IJ at 4-6; Tr. at 102). The boyfriend of the grandchildren's mother had also burned the two older children with a crack cocaine pipe (IJ at 4; Tr. at 101-02). At the time of the hearing, the grandchildren had been living with the respondent and his wife for three and a half years (IJ at 4; Tr. at 101). The respondent and his spouse were in the process of trying to adopt the grandchildren, but that had not yet been successful. In addition, while the respondent's wife worked prior to taking custody of the children, she stopped working once they were in her care (IJ at 4-5; Tr. at 106). The respondent was employed at a concrete company and prior to that a restaurant (IJ at 4; Tr. at 99). The respondent's wife has three additional children who reside with their father, and the respondent's wife pays monthly court-ordered child support to those children (IJ at 3; Tr. at 133-34).

The respondent's daughter lived in Mexico with the respondent's parents for seven years, and returned to live with the respondent in April 2013 (IJ at 5, 8-9; Tr. at 111-12). She is healthy and doing well in school. One of the grandchildren suffers from asthma and all three have nightmares and have trouble sleeping through the night (IJ at 6; Tr. at 127). Though not found by the Immigration Judge, both the respondent and his spouse testified that the children had seen a therapist to address the nightmares (Tr. at 106-07, 132).

While it is true that an Immigration Judge is not permitted to consider the hardship specifically to the three grandchildren, as they are not qualifying relatives, he may consider hardship factors relating to the grandchildren insofar as they may impact the hardship to the respondent's spouse and daughter. *See Matter of Monreal*, 23 I&N Dec. 56, 63 (BIA 2001). As the record establishes, in the event of the respondent's removal, his wife would remain in the United States with the respondent's other qualifying relative as well as their three grandchildren. They would not have the benefit of the respondent's financial and emotional support, and the respondent's spouse would be left alone to care for the respondent's daughter as well as the three grandchildren. Additionally, although the respondent's wife previously worked, and presumably could find employment again, she would be faced with supporting the four children living under her roof, as well as continuing to provide child support for her three other children. In light of the fact that the respondent's wife would be solely responsible for four children, including three young children who have suffered abuse and neglect and have exhibited emotional issues as a result, we are satisfied that the hardship to the respondent's spouse would be substantially beyond the ordinary hardship that would be expected when a close family member leaves this country. *See Matter of Recinas*, 23 I&N Dec. at 470-71 (finding the requisite hardship to a single mother of six children who would relocate to Mexico with no family support).

The Immigration Judge explicitly found that the respondent satisfied the remaining statutory requirements for cancellation of removal under section 240A(b)(1) of the Act, including the requisite good moral character and continuous physical presence. Accordingly, we will sustain the respondent's appeal and hold that he is eligible for and warrants a grant of cancellation of removal. We will remand the record for updating of the required background and security checks.

ORDER: The 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 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).

FOR THE BOARD