U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: B[redacted] H[redacted], L[redacted]... **A [redacted]-401**

Date of this notice: 2/25/2020

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:
Wendtland, Linda S.
Wilson, Earle B.
Greer, Anne J.

Userteam: Docket

File: A[redacted]-401 – Phoenix, AZ

Date:

FEB 25 2020

In re: L[redacted] F[redacted] B[redacted] H[redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Marcos S. Favela, Esquire

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

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's decision, dated May 14, 2018, denying his request for cancellation of removal under section 240A(b)(l) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(l). In addition, the respondent has filed a motion to remand for consideration of newly available evidence. The appeal will be sustained, and the record will be remanded.

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 questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondent had established the requisite continuous physical presence in the United States and good moral character, and that he is not barred from cancellation of removal based on any criminal offense (IJ at 6). *See* sections 240A(b)(1)(A)-(C) of the Act. However, the Immigration Judge found that the respondent did not establish that his qualifying relatives will cumulatively suffer "exceptional and extremely unusual hardship" if he is removed from the United States to Mexico (IJ at 7). *See* section 240A(b)(l)(D) of the Act. We disagree.

In reaching her determination, the Immigration Judge first noted that the respondent has four qualifying relatives: his three United States citizen children and his lawful permanent resident mother (IJ at 7). The respondent's oldest son, M[redacted], has autism, which the Immigration Judge described as a serious medical condition that requires him to attend a special school and take specific medications (IJ at 7; Tr. at 12-19). She also noted that, should the respondent be removed to Mexico, his family would accompany him (IJ at 7; Tr. at 29). In summarizing the documentary evidence in the record, the Immigration Judge cited to an article, stating that it indicates that the prevalence and incidence of autism spectrum disorders in Mexico is unknown because of a lack of systematic tracking of such disorders (IJ at 4; Exh. 7). She then found that the respondent chose not to submit relevant evidence that M[redacted] would receive a different level of care in Mexico than he receives in the United States, and thus failed to meet his burden of proof (IJ at 7).

On appeal, the respondent argues that the Immigration Judge committed clear error in mischaracterizing the evidence in the record by omitting certain information (Respondent's Br. at 6-8). Specifically, the Immigration Judge cited to only one sentence in the article, as mentioned

above, and did not take into consideration the article's assertion that, "among those who have been identified with [autism spectrum disorders] in Mexico, there is a documented lack of medical, social, and educational services" (IJ at 4; Exh. 7; Respondent's Br. at 8). We agree with the respondent that the Immigration Judge improperly evaluated the evidence in the record and committed clear error in mischaracterizing the article's contents (Respondent's Br. at 6-8).

Thus, with respect to the Immigration Judge's finding that the respondent did not show that his removal would result in exceptional and extremely unusual hardship to a qualifying relative, we conclude, on de novo review, that the respondent met his burden of proof (IJ at 7; Respondent's Br. at 12-14). Specifically, as discussed by the Immigration Judge, M[redacted] suffers from a serious medical condition and receives care, which includes occupational, speech, and behavioral therapy and an Individualized Education Program ("IEP"), and the record demonstrates a lack of such care in Mexico (IJ at 3, 7; Tr. at 12-21; Exh. 2, Tab C; Exh. 4; Exh. 7). Moreover, M[redacted] suffers from bipolar disorder, hyperactivity, daily migraines, and sinusitis, which causes nosebleeds three to four times per week (IJ at 3: Tr. at 10, 22-24).[1] Therefore, we conclude that the cumulative hardship to the respondent's qualifying relative is substantially different from or beyond that which normally would be expected from an alien's removal to a less developed country. *See* section 240A(b)(1)(D) of the Act; *see also Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *see also Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *see also Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).

Further, on balance, the record supports a favorable exercise of discretion given the hardships presented in this case, the lack of any criminal record, and the respondent's lengthy residency and gainful employment in the United States (IJ at 2-3; Tr. at 12-23, 35-39; Exh. 2, Tab E). *See Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978); *see also Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998). We also note that the Immigration Judge granted the respondent voluntary departure in the exercise of discretion (IJ at 8).

As such, we conclude that the respondent established statutory eligibility for cancellation of removal and has shown that he warrants a favorable exercise of discretion.[2] *See* 8 C.F.R. § 1003.1(d)(3)(ii). We will therefore vacate the Immigration Judge's decision denying cancellation of removal and remand the record so that the required background and security checks may be completed.[2]

[1] The Immigration Judge further noted that the respondent's other two sons also have IEPs, and one of them was recently diagnosed with autism (IJ at 3; Tr. at 24-28).

[2] As we are sustaining the respondent's appeal, we need not address the other issue raised in his brief (i.e., relating to the exclusion of evidence resulting in a claimed due process violation) or his motion to remand for consideration of newly available facts (Respondents' Br. at 8-12; Respondent's Motion). *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (noting the general rule that courts and agencies are not required to make findings on issues which are not dispositive to the outcome of cases)).

[2] Once granted cancellation of removal, the respondent will be ineligible for such relief in the future. *See* section 240A(c)(6) of the Act.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained, and the Immigration Judge's May 14, 2018, decision is vacated.

FURTHER ORDER: On this record, the respondent has established eligibility for cancellation of removal.

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