



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: M [REDACTED]-S [REDACTED], R [REDACTED]

A [REDACTED]-485

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:
Mullane, Hugh G.
Mann, Ana
Grant, Edward R.

Sh.J.ielM
Userteam: Docket

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RZ

Falls Church, Virginia 22041

File: A-485 – San Francisco, CA

Date: FEB 25 2020

In re: R-M-S

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Emilio T. Parker, Esquire

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Mexico, timely appeals an Immigration Judge's decision premitting his applications for cancellation of removal and voluntary departure. The Department of Homeland Security has not filed a response. The appeal will be sustained.

In a decision issued on June 8, 2018, the Immigration Judge determined that the respondent was not statutorily eligible for cancellation of removal and voluntary departure, and denied relief. The Immigration Judge found that since the respondent had been in custody for more than 180 days in the aggregate, he lacked good moral character. Section 101(f)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1101(f)(7); section 240A(b)(1)(B) of the Act, 8 U.S.C. § 1229b(b)(1)(B); section 240B(b)(1)(B) of the Act, 8 U.S.C. § 1229c(b)(1)(B).

It is settled that "an application for cancellation of removal remains a continuing one for purposes of evaluating an alien's moral character, and that the 10-year period during which good moral character must be established ends with the entry of a final administrative decision." *Matter of Ortega-Cabrera*, 23 I&N Dec. 793, 798 (BIA 2005). See also *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1162 (9th Cir. 2009). The same rule applies for voluntary departure. *Matter of Ortega-Cabrera*, 23 I&N Dec. at 795 n.1; *Matter of Garcia*, 24 I&N Dec. 179, 181 n.1 (BIA 2007).

Looking back from the Immigration Judge's June 8, 2018, decision, the record does not indicate that the respondent served 180 days in custody in the aggregate between June 8, 2008 and June 8, 2018 (Exh. 3, Tab F). The Immigration Judge erred because he considered custody outside the relevant period of time. Therefore, section 240A(b)(1)(B) of the Act does not bar relief. In addition, the respondent is not statutorily barred from voluntary departure due to good moral character. Section 240B(b)(1)(B) of the Act. We will therefore sustain the appeal and remand for further proceedings. We take no position on the ultimate merits of his applications for relief. The following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded for further proceedings in accordance with this decision.



FOR THE BOARD