U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: F[redacted]-V[redacted], G[redacted]... **A [redacted]-568**

Date of this notice: 3/23/2020

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:
Donovan, Teresa L.
Swanwick, Daniel L.
Greer, Anne J.

cc:
Userteam: Docket

File: A[redacted]-568 – Seattle, WA Date: MAR 23 2020

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Cornell Kirby, Esquire

ON BEHALF OF DHS: Jordan L. Jones
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture; cancellation of removal

The respondent, a native and citizen of Guatemala, has appealed the Immigration Judge's January 30, 2018, decision pretermitting and denying his application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, denying withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under Article 3 of the Convention Against Torture, as implemented by 8 C.F.R. §§ 1208.16-.18. The respondent also appeals the denial of his application for cancellation of removal under section 240A(b) of the Act, 8 U.S.C. § 1229b(b). The respondent's appeal will be sustained, in part, with respect to the determination under section 240A(b) of the Act, and will be dismissed in all other aspects.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015) (holding that determinations as to the likelihood of future events are findings of fact that are reviewed for clear error); *see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012). We review questions of law, discretion, or judgment, and all other issues de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii). The burden of proof is on the respondent to show he is eligible for cancellation of removal. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. 1240.8(d).

The Immigration Judge determined that cancellation of removal is unavailable to the respondent because he did not establish that his removal would result in exceptional and extremely unusual hardship to his qualifying relatives, including his lawful permanent resident father[1] and his four United States citizen children. On appeal, the respondent argues that the Immigration Judge erred by not finding exceptional and unusual hardship to his qualifying relatives. The Immigration Judge did not reach the question of continuous physical presence or

[1] The Immigration Judge observed that the respondent did not submit evidence demonstrating that his father was a lawful permanent resident, but that he considered his father a qualifying relative for relief purposes in any event (IJ at 9).

good moral character. We consider first whether the respondent has established exceptional or extremely unusual hardship to any qualifying United States citizens or lawful permanent resident relatives. *See* section 240A(b)(1)(D) of the Act. The respondent has four qualifying children-- his four United States citizen children, who were approximately 6 months through 4 years of age at the time of the hearing (IJ at 10). The children's mother is a United States citizen[2] (Tr. at 54-55; 95).

The Immigration Judge observed that one child has a heart-murmur and has periodic care. Another child was born with an abnormally-shaped head, but has had surgery to repair this, and it is possible that additional surgery may be necessary in the future (IJ at 12; Exh. 9A). The respondent's youngest daughter was also born with a cleft palate, which has currently not been surgically corrected. While the Immigration Judge acknowledged the children's various medical issues, he was unpersuaded that the children could not obtain effective medical care and treatment in Guatemala for their future medical treatments. The Immigration Judge also noted that the respondent's father has diabetes and that the respondent assists him in his doctor's appointments and other medical needs, but the Immigration Judge observed that other siblings could step in to assist the father if the respondent were removed (IJ at 9-10).

The Immigration Judge further observed that the respondent worked odd jobs and claimed to financially assist his children as well as his parents (Tr. at 99-104). The Immigration Judge acknowledged that there may be financial hardship if the children accompany their father to Guatemala and a potential loss of social services and food stamps, which they presently receive (IJ at 11-12; Tr. at 104-05). The Immigration Judge also considered the emotional hardship the children may experience as they are close to their father and grandparents (IJ at 11-12). Nonetheless, the Immigration Judge determined that the respondent's qualifying relatives would not experience hardship beyond what is normal and to be expected by individuals when they are separated from their loved ones.

In light of the educational, economic, medical and emotional challenges demonstrated on this record, we disagree with the Immigration Judge's conclusion that the hardship evidence does not rise to the level of exceptional and extremely unusual. *See Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001). We conclude that the respondent has demonstrated that his qualifying relatives, on an individual basis, would suffer hardship that is substantially different from, or beyond, that which would normally be expected to result from the removal of an alien with close family members in the United States. Therefore, we reverse the Immigration Judge's contrary conclusion. *See* section 240A(b)(1)(D) of the Act; *see* 8 C.F.R. § 1003.1(d)(3)(ii).

Due to the Immigration Judge's previous hardship finding, he did not reach the continuous physical presence or the presence of good moral character issues (IJ at 13). *See* section 240A(b)(1)(A), (B) of the Act; *see generally Matter of Ortega-Cabrera*, 23 I&N Dec. 793 (BIA

[2] On the Notice of Appeal, the respondent states that the Immigration Judge failed to consider the mother's testimony. However, there is no indication in the record that the mother testified or wanted to testify (Tr. at 1-111).

2005) (observing that an alien must show good moral character for a period of 10-years calculated backward from the date on which the application is finally resolved by the Immigration Judge or the Board). Therefore, the record will be remanded to the Immigration Judge for further fact-finding and legal analysis. 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding authority and stating the Board may remand the proceeding to the Immigration Judge where further fact-finding is needed); *see Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We express no opinion regarding the ultimate outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with this order.

FOR THE BOARD