



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: L [REDACTED] M [REDACTED], A [REDACTED]

A [REDACTED]-266

Date of this notice: 12/16/2019

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:
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A- -266 – San Francisco, CA

Date: **DEC 16 2019**

In re: L M a.k.a.

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Nathan Menta Zaslow, Esquire

APPLICATION: Reopening; remand

This case was last before us on April 30, 2019, when we dismissed the respondent's appeal from an Immigration Judge's decision denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The respondent now files a timely motion to reopen proceedings and remand for further consideration of the evidence now provided relating to the issue of hardship. The Department of Homeland Security (DHS) has not filed a response in opposition to the respondent's motion. The motion will be granted and the record will be remanded.

A motion to remand and reopen must state new, material facts and be supported by evidence that was previously unavailable to the respondent. 8 C.F.R. § 1003.2(c)(1). The respondent submits evidence that one of his qualifying relative children was recently diagnosed with autism and ADHD, and now requires additional special education services as well as prescription medication. Furthermore, the respondent asserts that his family's situation has changed, such that his wife and children would now accompany him to Mexico in the event of his removal. Under the circumstances, we find it appropriate to remand the record to the Immigration Judge to reevaluate the respondent's application for cancellation of removal in light of this new evidence. *See Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992). The parties should be provided the opportunity to update the record with documentary and testimonial evidence bearing on the respondent's eligibility for relief from removal. We express no opinion as to the ultimate outcome of these remanded proceedings, other than to note that the burden of establishing eligibility for relief remains with the respondent. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A).

Accordingly, the following orders will be entered.

ORDER: The motion to reopen and remand is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.



FOR THE BOARD