



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: RETIGUIN-ALVAREZ, HECTOR

A088-763-754

Date of this notice: 7/14/2010

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:

Kendall-Clark, Molly
King, Jean C.
Miller, Neil P.

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Falls Church, Virginia 22041

File: A088 763 754 - Phoenix, AZ

Date: JUL 14 2010

In re: HECTOR RETIGUIN-ALVAREZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Israel S. Hernandez, Esquire

ON BEHALF OF DHS: James Harmony
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's decision of July 21, 2009, denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The appeal will be sustained and the record remanded.

Under 8 C.F.R. § 1003.1(d)(3), the Board defers to the factual findings of an Immigration Judge, unless they are clearly erroneous, but it retains independent judgment and discretion, subject to applicable governing standards, regarding pure questions of law and the application of a particular standard of law to those facts. *Matter of A-S-B-*, 24 I&N Dec. 493, 497 (BIA 2008). In this case, the Immigration Judge found that the respondent failed to establish the requisite level of hardship for his qualifying relatives (I.J. at 8). Sections 240A(b)(1)(A), (D) of the Act. Upon de novo review, we reverse the Immigration Judge's finding on hardship.

Specifically, we find that under the particular circumstances of this case, the evidence is sufficient to demonstrate that the respondent's removal to Mexico would result in exceptional and extremely unusual hardship to his two United States citizen children. Section 240A(b)(1)(D) of the Act. The record shows that children, 9 and 15 years of age at the time of the hearing, lost their mother to cancer five years ago and are being raised by the respondent alone (I.J. at 4; Tr. at 23). The children have never been to Mexico (I.J. at 8; Tr. at 41). Given the traumatic experience of losing their mother at such young and vulnerable ages, the very close nature of their relationship to their one remaining parent, the respondent, and the additional upheaval that removal to a country they do not know at all would add to lives that have already been traumatized, we find that the requisite level of hardship has been established.

Therefore, the appeal will be sustained. The record will be remanded to allow the Department of Homeland Security an opportunity to perform or update a background and security investigation. Accordingly, the following orders will be entered.

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