



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: D [REDACTED] -M [REDACTED], [REDACTED]

A [REDACTED] -318

Date of this notice: 2/6/2020

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.
Greer, Anne J.
Wendtland, Linda S.

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: [REDACTED]-318 – Chicago, IL

Date:

FEB - 6 2020

In re: [REDACTED] D [REDACTED]-M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jason A. Flora, Esquire

ON BEHALF OF DHS: Geoffrey P. Gilpin
Assistant Chief Council

APPLICATIONS: Cancellation of removal

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's June 20, 2018, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Department of Homeland Security (DHS) opposes the appeal. The appeal will be sustained, the Immigration Judge's decision will be vacated, and the record will be remanded to the Immigration Judge for any necessary background and security investigations.

This Board reviews the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondent met the requirement for continuous physical presence, but failed to satisfy the requirements for good moral character and exceptional and extremely unusual hardship (IJ at 2-5). *See* sections 240A(b)(1)(A)-(D) of the Act. The Immigration Judge also denied relief as a matter of discretion (IJ at 5).

First, we disagree with the Immigration Judge that the respondent did not establish the requisite good moral character as required under section 240A(b)(1)(B) of the Act (IJ at 2-3). The Immigration Judge did not conclude that the respondent was statutorily precluded from showing good moral character under section 101(f)(1) – (9) of the Act and instead conducted a discretionary analysis consistent with the "catch-all provision." *See Matter of Guadarrama*, 24 I&N Dec. 625 (BIA 2008). The Immigration Judge considered the respondent's 2013 misdemeanor conviction for use of false identity against letters of support and testimony from his wife and concluded that he did not establish good moral character. (IJ at 2-3; Tr. at 22-23; Exh. 4 p. 12).

Despite the seriousness of the respondent's 2013 conviction resulting from his use of these documents to work, the Immigration Judge did not consider positive factors beyond the letters and his wife's testimony in general. The respondent has significant family ties to the United States, has resided in the United States for a lengthy period without other criminal activity and has a history of employment. As noted by the Immigration Judge, the evidence reflects that he is an

involved father who provides for his family and a valued employee (IJ at 2-4; Tr. at 13, 59-61). Under these circumstances, we conclude that the sum total of the respondent's actions demonstrate that he has been a person of good moral character during the relevant 10 year period as required for cancellation of removal under section 240A(b)(1)(B) of the Act.

Second, we disagree with the Immigration Judge that the respondent has not established the requisite hardship. *See* section 240A(b)(1)(D) of the Act. The respondent's qualifying relatives include three United States Citizen children: an 8-year-old daughter and two sons, ages 10 and 13 (IJ at 3; Tr. at 15-16). The respondent's older son suffers from a number of ailments, including speech, vision and circulatory issues, as well as orthopedic issues affecting his mobility, which require monitoring and therapeutic intervention (IJ at 3-4; Tr. at 24-42).

The medical hardships are sufficient to show exceptional and extremely unusual hardship in this case given the respondent's role in providing medical and financial support to his eldest son. *See Matter of Monreal*, 23 I&N Dec. 56, 63-65 (BIA 2001) (holding that a qualifying child with serious health issues or compelling special needs in school are factors to consider when assessing hardship).


Lastly, we also disagree with the Immigration Judge's discretionary denial of relief. The respondent has resided for many years in the United States, is gainfully employed, supports his family, and has no criminal conduct unrelated to his conviction in 2013. Based on the foregoing, we conclude that the respondent's favorable equities outweigh the negative factors in his case. *See Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998). In light of our reversal, we conclude that on this record, the respondent is statutorily eligible for cancellation of removal under section 240A(b)(1) of the Act. We note that grant of cancellation of removal cannot be granted again 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 decision is vacated.

FURTHER ORDER: On this record, the respondent is eligible for cancellation of removal under section 240A(b) of the Act.

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