



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: G [REDACTED] H [REDACTED], R [REDACTED]... A [REDACTED]-190

**Date of this notice: 6/26/2020**

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:  
Swanwick, Daniel L.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A-190-190 – York, PA

Date:

JUN 26 2020

In re: R-G-H a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Susan Smolens, Esquire

ON BEHALF OF DHS: Matthew H. Doll  
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(b)

The Department of Homeland Security (DHS) has appealed from an Immigration Judge's January 16, 2020, decision granting the respondent's application for cancellation of removal pursuant to section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b).<sup>1</sup> The respondent has filed a brief in opposition to the DHS's appeal. The appeal will be dismissed, and the record will be remanded for the required background checks.

We review an Immigration Judge's factual determinations, including credibility determinations, for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i). The Board uses a de novo standard of review for questions of law, discretion, judgment, and all other issues in appeals from decisions of Immigration Judges. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent, a native and citizen of Mexico, first came to the United States in 1998, and returned to the United States a second time in 2005 (IJ at 7). The Immigration Judge concluded that the respondent demonstrated that his removal will cause exceptional and extremely unusual hardship to his United States citizen son (IJ at 4-7).<sup>2</sup> Further, the Immigration Judge found that the respondent has demonstrated good moral character, and warranted cancellation as a matter of discretion (IJ at 7-8). On appeal the DHS challenges all of those findings.

We discern no clear error in the Immigration Judge's factual findings related to his determination that the respondent's now 11-year old son will experience exceptional and extremely unusual hardship if his father is removed to Mexico. The respondent's son has been diagnosed with attention deficit hyperactivity disorder (ADHD), of a serious and specific type identified as impulsive ADHD (IJ at 5; Exh. 2, Tab I). A mental health assessment of his son to identify this disorder and its impact on his son's functioning indicates that he tests in the 99th percentile for depression and anxiety. *Id.* His son's past behavior includes making threats and comments about bombing his school or shooting people. Prior to the respondent's detention, he

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<sup>1</sup> We will grant the DHS's motion to accept a late-filed brief.

<sup>2</sup> The respondent also has a United States citizen daughter.

was actively involved in the care of his son (IJ at 5-6; Exh. 2, at 49). The respondent's son will also be impacted by the financial hardship that his family will undergo if the respondent is removed to Mexico (IJ at 6). While we acknowledge the DHS's argument on appeal that there is evidence indicating that the respondent's son has shown improvement (DHS's Br. at 7-8), we agree with the Immigration Judge's assessment that this is likely a temporary situation, as indicated by the slight regression of his son's behavior while the respondent has been detained (IJ at 6). Accordingly, the respondent has established exceptional and extremely unusual hardship to his United States citizen son.

Further, we disagree with the DHS's argument on appeal that the Immigration Judge erred in determining that the respondent had established good moral character during the requisite 10-year period (DHS's Br. at 8-10). Specifically, the Immigration Judge properly determined that the respondent established that he was a person of good moral character under the catch-all provision of section 101(f) of the Act, 8 U.S.C. § 1101(f), balancing the favorable and unfavorable factors bearing on the respondent's character (IJ at 7-8). *See Torres-Guzman v. INS*, 804 F.2d 531, 533-34 (9th Cir. 1986)

In assessing the respondent's good moral character, the Immigration Judge considered the respondent's criminal history, which includes a 2011 conviction for driving under the influence (DUI), and a 2013 guilty plea to disorderly conduct as a hazardous or physical offense (IJ at 7). As the DHS correctly points out on appeal, the respondent's DUI conviction is certainly a negative factor weighing against a finding of good moral character (DHS's Br. at 9). However, the Immigration Judge properly credited the respondent's rehabilitation, as evidenced by his participation in psychiatric therapy after his DUI conviction, his completion of driving classes and community service, his attendance at Alcoholics Anonymous, and the respondent's testimony that he stopped drinking. The Immigration Judge also considered the circumstances surrounding the respondent's 2013 conviction, in which the respondent left his sleeping son unattended for approximately 10 minutes while he drove his wife to work, and the respondent's testimony that he has never again left his children unattended (IJ at 7; Exh. 3, at 20-24). *Id.* We further find no error in the Immigration Judge's characterization as an "isolated incident" a domestic violence arrest, in which the Immigration Judge accepted the explanation of the respondent's wife of the circumstances surrounding that arrest (IJ at 7-8).

On balance, including the numerous letters that were submitted attesting to the respondent's good character, and evidence indicating that the respondent is a loving father and loyal spouse who has worked hard to support his family and ensure their wellbeing, the record indicates that the sum-total of all the respondent's actions supports a showing of good moral character during the relevant 10-year period (IJ at 8).. *See Torres-Guzman v. INS*, 804 F.2d at 533-34; *see also Matter of U-*, 21 I&N Dec. 830, 831 (BIA, A.G. 1947) (stating that good moral character does not require moral excellence but it is the measure of a person's natural worth derived from the sum total of all his or her actions in the community).

Finally, we disagree with the DHS's contention that the Immigration Judge erroneously granted cancellation of removal in the exercise of discretion (DHS's Br. at 10-13). As the Immigration Judge found, the respondent's equities—including his community ties, the many letters submitted on his behalf, his employment in support of his family, the hardship to his son, and the other

equities reflected in the record—outweigh his criminal record (IJ at 8; Exhs. 2, 4). For these reasons, we will uphold the grant of cancellation of removal and remand solely for completion of the required background checks. Accordingly, the following orders shall be entered.

ORDER: The appeal is dismissed.

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).

  
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FOR THE BOARD