U.S. Department of Justice 04-01743

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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YYC

Name: [redacted]

A [redacted]**-786**

Date of this notice: 8/4/2015

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

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BRETZ & COVEN, LLP
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Enclosure

Panel Members:
Cole, Patricia A.
Geller, Joan B
O'Herron, Margaret M

Userteam: Docket

File: A[redacted] 786 - Charlotte, NC

Date: AUG 4 2015

In re: Y-Y-C- [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Disha Chandiramani, Esquire

ON BEHALF OF DHS: [redacted]
Melissa K. Metz
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Cancellation of removal

The respondent is a native and citizen of China. This case was last before us on June 20, 2013, when we remanded proceedings to the Immigration Judge for further consideration of the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). On October 28, 2013, the Immigration Judge denied the respondent's application for cancellation of removal. The appeal will be sustained, and the case will be remanded for the necessary background checks.

On appeal, the respondent argues that the Immigration Judge erred in determining that she was ineligible for cancellation of removal. Specifically, the respondent contends that she established that her removal would result in "exceptional and extremely unusual hardship" to her United States citizen husband and her 4-year-old and 5-year-old United States citizen children. *See* section 240A(b)(1)(D) of the Act. The respondent also argues that the Immigration Judge erred in denying administrative closure.

We disagree with the Immigration Judge's decision denying the respondent's application for cancellation of removal. Specifically, we disagree with the Immigration Judge's finding that the respondent did not establish "exceptional and extremely unusual hardship" to her United States citizen husband and her 4-year-old and 5-year-old United States citizen children as required by section 240A(b)(1)(D) of the Act (I.J. at 4-9).[1] The respondent testified that she is the primary

[1] Although the Immigration Judge's factual determinations in connection with a cancellation of removal application are reviewed for clear error, 8 C.F.R. § 1003.1(d)(3)(i), whether those facts support a finding of "exceptional and extremely unusual hardship" is a question of law which we review de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

caregiver and financial provider to her United States citizen children because her husband was partially incapacitated following a car accident (I.J. at 4; Tr. at 61-62). Moreover, the respondent's husband suffers from hepatitis (I.J. at 5; Tr. at 64). Although the respondent testified that her husband can occasionally help in the family's restaurant, his injury requires him to wear a back brace and take pain medication (I.J. at 4; Tr. at 61-62, 64, 92). Furthermore, the respondent's United States citizen daughter suffers from excessive tearing in her left eye, and her United States citizen son suffers from hyperactivity, excessive vomiting and fevers, and speech delays (I.J. at 6; Tr. at 74-78). Although the Immigration Judge found that the respondent's parents-in-law could assist the respondent's husband upon the respondent's removal, the respondent and her husband testified that his parents also suffer from various health issues (I.J. at 7; Tr. at 62-63, 80, 88-89). Additionally, unlike the Immigration Judge, we find the fact that the respondent's husband seeks medical treatment in New York rather than in North Carolina because of language barriers is insufficient to diminish the severity of her husband's health conditions (I.J. at 5; Tr. at 64, 66). Given the husband's and the children's health conditions and the dependency of the respondent's children on her for financial and emotional support, we find that the cumulative factors presented in this case are indeed unusual and will not typically be found in most other cases. *See Matter of Recinas*, 23 I&N Dec. 467, 471 (BIA 2002) (emphasizing that the alien was a single parent who was solely responsible for her United States citizen children in finding that the alien established exceptional and extremely unusual hardship).

Because we disagree with the Immigration Judge's decision based on the aforementioned reasons, we need not also discuss whether administrative closure should have been granted. We hold that the respondent is eligible for and merits a grant of cancellation of removal.

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