



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: M [REDACTED] M [REDACTED], E [REDACTED] A [REDACTED] -698**

**Date of this notice: 11/14/2019**

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:  
Greer, Anne J.  
O'Connor, Blair  
Wendtland, Linda S.

Userteam: Docket

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*ng*

Falls Church, Virginia 22041

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File: [REDACTED]-698 – Omaha, NE

Date:

NOV 14 2019

In re: B [REDACTED] M [REDACTED] M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Daniel J. Vondra, Esquire

APPLICATION: Special rule cancellation of removal

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's May 21, 2019, decision denying the respondent's application for special rule cancellation of removal under section 240A(b)(2)(A) of the Immigration and Nationality Act. *See* 8 U.S.C. § 1229b(b)(2)(A). The appeal will be sustained and the record will be remanded.

We review the Immigration Judge's factual findings for clear error, including findings as to the credibility of testimony. We review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges *de novo*. *See* 8 C.F.R. § 1003.1(d)(3).

Section 240A(b)(2)(A) provides that an alien may be eligible for special rule cancellation of removal as a "battered spouse or child" if the alien demonstrates that he or she is not inadmissible or deportable under certain provisions of the Act; the alien was battered or subjected to extreme cruelty by a spouse who is or was a United States citizen; he or she was physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of the application; the alien has been a person of good moral character during this period; and the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent. *See* section 240A(b)(2)(A) of the Act.

In this case, the Immigration Judge found that the respondent was battered or subjected to extreme cruelty by his United States citizen wife who suffers from mental health disorders. The Immigration Judge also found that the respondent satisfied the continuous physical presence requirement. On appeal, the respondent argues that the Immigration Judge erred by finding that the respondent lacked good moral character (Respondent's Br. at 5-7).

After the Immigration Judge's decision in this case, the Attorney General decided *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019). In that case, the Attorney General held that evidence of two or more convictions for Driving Under the Influence create a presumption that an alien lacks good moral character under section 101(f) of the Act.<sup>1</sup> In this case, the respondent has two misdemeanor convictions for Operating While Intoxicated (IJ at 11).


<sup>1</sup> Section 101(f) of the Act defines good moral character. After listing several categories of persons who may not be found to have good moral character, the statute provides a catch-all provision which governs this case and states: the "fact that any person is not within any of the

We note, however, that section 240A(b)(2)(C) of the Act provides that that a conviction shall not bar a good moral character finding if it is determined that the conviction “was connected to the alien’s having been battered or subjected to extreme cruelty.” In this case, the Immigration Judge did not make a factual finding with regard to whether the respondent’s convictions were connected to having been battered or subjected to extreme cruelty. For these reasons, we will remand the record for the Immigration Judge to address both *Matter of Castillo-Perez* and section 240A(b)(2)(C) in the first instance.

In addition, we note that the Immigration Judge did not address the issue of whether the respondent merits relief as a matter of discretion. In considering whether the respondent is entitled to relief as a matter of discretion, adjudicators must balance the relevant favorable and adverse factors. See *Matter of M-L-M-A-*, 26 I&N Dec. at 364; *Matter of A-M-*, 25 I&N Dec. 66, 76-77 (BIA 2009) (discretionary factors considered should be relevant to the application at issue); *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970). Thus, on remand the Immigration Judge should also conduct this separate analysis.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this opinion and the entry of a new decision.

  
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FOR THE BOARD

foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character....” See, e.g., *Matter of M-L-M-A-*, 26 I&N Dec. 360, 363 (BIA 2014) (the (adverse credibility finding and the respondent’s fraudulent asylum application were “not so significant as to prevent the respondent from meeting her burden of proof in establishing good moral character” under the catch-all provision); *Matter of Guadarrama De Contreras*, 24 I&N Dec. 625 (BIA 2008) (an alien who has made a false claim of citizenship may be considered a person who is not of good moral character under the catch-all provision).