U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: R[redacted], N[redacted]

A [redacted]-860

Date of this notice: 11/13/2018

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:
Adkins-Blanch, Charles K.
Mann, Ana
Snow, Thomas G

Userteam: Docket

File: [redacted]-860 – Cleveland, OH

Date: NOV 13 2018

In re: N[redacted] [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Inna Simakovsky, Esquire

APPLICATION: Cancellation of removal; voluntary departure

This matter was last before the Board on September 20, 2017, when we dismissed the respondent's appeal from the February 8, 2017, decision of the Immigration Judge that denied his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). On April 5, 2018, the United States Court of Appeals for the Sixth Circuit granted the Government's unopposed motion to remand the case to the Board. The Government sought the remand to allow the Board to:

> ..."further consider the Immigration Judge's reliance on *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)[,] in determining that [the respondent] failed to establish that his United States citizen children would experience 'exceptional and extremely unusual hardship' should they accompany him to Mexico and that any additional hardship that they would experience would be the result of parental choice, (citation to record omitted) in light of the Board's decision in *Matter of Calderon-Hernandez*, 25 I&N Dec. 885, 886-87 (BIA 2012) (remanding for an assessment of hardship if the children remained in the United States even though the Immigration Judge had already found no 'exceptional and extremely unusual hardship' if they accompanied Calderon-Hernandez to Mexico)."

In granting the motion, the Court of Appeals noted that a more detailed decision would aid appellate review. The record will be remanded for further proceedings.

The respondent argued on appeal that his children would suffer exceptional and extremely unusual hardship upon his removal to Mexico because he would leave them behind in the United States with their mother (Respondent's Br. at 4-6). The respondent specifically expressed concern that separation from his family would cause emotional and financial harm to his children. He indicated that he did not believe that he could earn enough money in Mexico to support his family, that he would be unable to obtain medication for himself and his son, and that his children would not receive an adequate education. The respondent argued that his partner did not earn sufficient wages to support his children. He also asserted that there was insufficient evidence in the record to show that he would receive treatment in Mexico for his diabetes, which might in turn result in hardship to his children.

The Immigration Judge cited our decision in *Matter of Ige* for his holding that, when exceptional and extremely unusual hardship would not occur if a citizen child accompanies his or her parents to the country of removal, then it follows that the greater hardship that would result if

the child should remain in the United States would be a matter of parental choice, not the alien's deportation (IJ at 14-15). *See Matter of Ige*, 20 I&N Dec. at 885. However, in *Matter of Ige,* both parents were in deportation proceedings. We held that a claim of hardship resulting from an alien's determination to leave citizen children behind in the United States will not be given significant weight in the absence of an affidavit or other evidence that adequate provision has been made for the care and welfare of the children, as such an assertion can be made for litigation purposes and most parents would not carry out such a plan in reality. *Id.*

In *Matter of Calderon-Hernandez*, where only one parent was in removal proceedings, the Immigration Judge declined to consider hardship to the alien's children because no evidence was submitted to show the arrangements made for their care. We clarified that it is unnecessary to provide such evidence when only one parent is in proceedings because it may be presumed that the parent remaining in the United States will attend to the care and welfare of the children. We remanded the case for the Immigration Judge to consider hardship to the alien's children if they remained in the United State.

The factual scenario in this case is distinct from the one presented in *Matter of Ige*. The parental "choice" referred to in *Matter of Ige* was the decision by both parents to abandon their children in the United States without anyone to care for them, not the choice between whether the children would leave the United States with one parent or stay in the United States with the other parent. Therefore, the language from our decision in *Matter of Ige* concerning parental choice does not apply in this case, and it was improper for the Immigration Judge to dismiss on that basis any hardship that might result to the respondent's children should they remain in the United States (IJ at 14-15).

Accordingly, the respondent's application for relief should be re-examined in light of our decision in *Matter of Calderon-Hernandez*. We will remand the record for the Immigration Judge to make clear findings of fact concerning the hardship that would result to the respondent's qualifying relatives if they remain in the United States with their mother.

Accordingly, the following order will be entered.

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

FOR THE BOARD