



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: R [REDACTED]-O [REDACTED], L [REDACTED]

A [REDACTED]-619

Date of this notice: 2/5/2020

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:
Greer, Anne J.
Wendtland, Linda S.
Donovan, Teresa L.

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A-619 – Fort Snelling, MN

Date:

FEB - 5 2020

In re: L-R-O

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert Leo Pritschet, Esquire

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's April 9, 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 respondent's appeal will be sustained and the record will be remanded to the Immigration Court for further proceedings.

We review an Immigration Judge's findings of fact, including credibility determinations, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge determined that the following statutory requirements of eligibility for cancellation of removal have been met in this case: (1) continuous physical presence, (2) good moral character, and (3) absence of criminal statutory bars (IJ at 11-13). Sections 240A(b)(1)(A)-(C) of the Act. The Immigration Judge also concluded that the respondent merited a favorable exercise of discretion (IJ at 13). However, the Immigration Judge denied cancellation of removal, concluding that the respondent's removal would not result in exceptional and extremely unusual hardship to his qualifying relatives, including his United States citizen spouse and stepdaughter, and two United States citizen children (born in April 2013 and in February 2015) (IJ at 6, 13-18). See section 240A(b)(1)(D) of the Act.


On de novo review, we disagree with the Immigration Judge's conclusion that the evidence does not demonstrate that the respondent's qualifying relatives, most notably his United States citizen spouse, would suffer exceptional and extremely unusual hardship if the respondent returned to Mexico. See section 240A(b)(1)(D) of the Act; *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56, 62 (BIA 2001). The evidence reflects that the respondent's spouse has a long history of emotional and mental health struggles, for which she has received therapy and taken medication (IJ at 6-8; Tr. at 39-44, 66-74, 114-15, 128). The respondent takes over the various responsibilities of parenting when his spouse's mental health symptoms recur (IJ at 7, 10-11; Tr. at 44-45, 117).

The respondent's spouse does not have a close relationship with her parents or with the respondent's relatives. She relies primarily on the respondent for emotional support, and her history of treatment and therapy includes progress and setbacks (IJ at 7, 15-17; Tr. at 58-59, 79-80,

83-84, 86-87, 127-30). Overall, the evidence reflects that the respondent's spouse is highly vulnerable due to her long-standing emotional and psychological problems, and the respondent is the key figure who aids her in managing her symptoms and maintaining a balanced family life (IJ at 6-18). In the event of the respondent's removal from the United States, his spouse and children would not accompany him to Mexico (IJ at 8-9). The evidence reflects that family separation in this case is likely to upset the fragile balance that the respondent and his spouse have been able to achieve due to mutual support (IJ at 17-18) (*see* Respondent's Br. at 8-9). Accordingly, we conclude that the respondent has demonstrated eligibility for cancellation of removal under section 240A(b) of the Act. In view of the foregoing, the following orders will be entered.

ORDER: The respondent's 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