U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Panachida, Richard Jacob
Puntier Law Firm
5720 Buford Hwy
Suite 201
Norcross, GA 30071

DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303

Name: A[redacted]-R[redacted], A[redacted] A... **A [redacted]-108**
Riders: [redacted]

Date of this notice: 7/9/2020

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.
Donovan, Teresa L.
Goodwin, Deborah K.

Userteam: Docket

Files: A[redacted]-108 - Atlanta, GA
A[redacted]

Date: JUL - 9 2020

In re: A[redacted] A[redacted] A[redacted]-R[redacted]
[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Richard Jacob Panachida, Esquire

APPLICATION: Cancellation of removal

The respondents[1] timely appeal from an Immigration Judge's March 7, 2018, decision, denying their application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The appeal will be sustained, and the case will be remanded for the sole purpose of allowing the DHS 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).

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony and the likelihood of future events, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015) (holding that determinations as to the likelihood of future events are findings of fact that are reviewed for clear error). The Board reviews questions of law, discretion, and judgment in an appeal of an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondents do not challenge the Immigration Judge's findings as to their removability, and those findings are affirmed. The principal issue before us on appeal concerns the Immigration Judge's denial of the respondent's request for cancellation of removal for non-lawful permanent residents of the United States under section 240A(b) of the Act.

In the first instance, we agree with the Immigration Judge's conclusion that the respondent established the requisite continuous physical presence in the United States for cancellation of removal pursuant to section 240A(b)(1)(A) of the Act, 8 U.S.C. § 1229b(b)(1)(A) (IJ at 3). Moreover, we concur with the Immigration Judge's determination that the respondent established the requisite good moral character for the relevant ten (10) period, noting that "[u]pon consideration of the respondents' conduct over the past 10 years, their dedication to their family and community, their strong work ethic, and the absence of any evidence of criminally malicious conduct all demonstrate that the respondents are persons of good moral character" as required under section 240A(b)(1)(B) of the Act, 8 U.S.C. § 1229b(b)(1)(B) (IJ at 3-5; Exh. 2, Tab E; Exh.3,

[1] The respondents are husband and wife. The male respondent is the lead respondent and a native and citizen of Guatemala. The female respondent is a native and citizen of Mexico, and a derivative beneficiary of the lead respondent's application for cancellation of removal.

Tabs C, D; Exh. 4. Tab B; Exh. 5, Tabs E, F; Exh. 6, Tab D). However, we disagree with the Immigration Judge's determination, that the respondent did not meet his burden and show that their removal from the United States to Guatemala, would result in exceptional and extremely unusual hardship to their qualifying relatives, their four United States citizen children,[2] and in particular, to their United States citizen son, B[redacted]. We find that the particular circumstances of this case rise to the level of exceptional and extremely unusual hardship to the respondent's United States citizen children, and in particular, to their United States citizen son, B[redacted]. *See Matter* of *Monreal*, 23 I&N Dec. 56 (BIA 2001); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).

There is evidence in the record that B[redacted] may have a learning disability. Specifically, the record includes a copy of a psychological evaluation that was prepared to assess B[redacted]'s cognitive, academic, and behavioral functioning (Exh. 5 at 21-29). The report revealed that his intellectual/functioning score for the verbal component was in the lower extreme range; his IQ composite score was below average; his visual and auditory tests show mild to severe impairment with a working diagnosis of Attention Deficit/Hyperactivity Disorder, Combined Type ("ADHD") with a recommendation for further psychoeducational evaluation and medication (Exh. 5 at 21-29). Although the report was prepared in 2015, the pharmacy refills for his ADHD medication are current.

The Immigration Judge acknowledged that the evidence in the record reflects that B[redacted] suffers from ADHD (IJ at 7; Exh. 5, Tab C at 21-29). Moreover, B[redacted] may have developmental and learning disabilities; and already has had to repeat a grade (Tr. at 67, 76, 145; Respondent's Br. at 16).

Based on the credible testimony of the respondents, as well as the evidence of record related to the possible developmental and learning disability of the respondents' United States citizen son, B[redacted], we find that the respondent's qualifying relative would suffer exceptional and extremely unusual hardship if the respondents were removed to Guatemala. The record demonstrates that B[redacted], has compelling special needs in school. *Matter of Monreal,* 23 I&N Dec. at 63-64 (stating that cancellation may be appropriate where a qualifying child has "very serious health issues" or "special needs in school"). He has needed special education classes in the United States during the normal school day, and he benefits from further assistance after school 4 days a week (Tr. at 147-48). Additionally, it appears that the child has had language issues, and with a limited command of the Spanish language, it would be very difficult for this particular child to enter a Spanish language school when he cannot read or write in Spanish (Tr. at 77). As B[redacted] also may have developmental and learning disabilities, it would be extremely difficult for him, compared to a child with no learning disabilities, to continue his studies in a foreign language. A disruption in the care and educational assistance he is currently receiving would alone result in a hardship to B[redacted] given his ADHD condition regardless as to whether he could receive his ADHD medications and attend school in Guatemala.

[2] We note, parenthetically, that during the course of these proceedings, the female respondent gave birth on August 22, 2017, to another United States citizen—a daughter, [redacted] (Respondent's Br., Attachment A).

Therefore, we are not persuaded that B[redacted], in particular, would not experience significant hardship, which rises to the level of exceptional and extremely unusual, should there be an interruption in the established educational and supportive services which he currently receives though the public school system here in the United States. The analysis of exceptional and extremely unusual hardship is a future-oriented analysis. *See Figueroa v. Mukasey*, 543 F.3d 487, 497-98 (9th Cir. 2008). The combined special educational and medical needs of B[redacted] are significant. When the various hardships in this case are considered cumulatively, the lead respondent has adequately carried his burden of establishing that his qualifying relative, his United States citizen son, B[redacted], in particular, would face exceptional and extremely unusual hardship upon removal to Guatemala. *See Matter of Recinas*, 23 I&N Dec. at 472 ("Part of that analysis requires the assessment of hardship factors in their totality, often termed a 'cumulative' analysis"). *See* section 240A(b)(1)(D) of the Act.

As such, we conclude the respondent has not only established his statutory eligibility for cancellation of removal under section 240A(b) of the Act, but that the respondent's request for cancellation of removal, is also warranted, as a matter of discretion.

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 DHS 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