U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: S[redacted] C[redacted], R[redacted]

A [redacted]-059

Date of this notice: 6/7/2018

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:
Pauley, Roger

Userteam: Docket

File: [redacted] 059 – Philadelphia, PA Date: JUN 07 2018

In re: R[redacted] S[redacted] C[redacted] a.k.a.[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas M. Griffin, Esquire

ON BEHALF OF DHS: Jean L. Celestin
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The respondent is a native and citizen of Mexico. The Department of Homeland Security (DHS) appeals from the Immigration Judge's June 20, 2017, decision granting the respondent's 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 dismissed, and the record will be remanded for the appropriate background investigations.

This Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review questions of law, discretion, and judgment de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

We have considered the DHS's appellate arguments that the respondent did not establish that he is eligible for cancellation of removal under section 240A(b) of the Act, both statutorily and as a matter of discretion. However, we ultimately affirm the Immigration Judge's decision granting cancellation of removal because we agree that the respondent has advanced sufficient evidence to meet his burden of proof. *See* section 240(c)(4) of the Act, 8 U.S.C. § 1229a(c)(4).

Specifically, we agree with the Immigration Judge that the respondent's use of a United States passport to enter the United States in January 2012, does not categorically bar a positive good moral character finding, and that the specific facts and evidence of this case support the determination that the respondent has been a person of good moral character for the requisite 10-year period (IJ at 9-10). Section 240A(b)(1)(B) of the Act; *Matter of Guadarrama*, 24 I&N Dec. 625 (BIA 2008). The respondent has no criminal convictions, has worked hard to establish a life for his family in the United States, and traveled to Mexico from November 2011 until January 2012, due to familial commitments, not for any nefarious purpose (IJ at 9-10). The Immigration Judge properly found that while the respondent's activities "were not to be condoned," they do not preclude a positive good moral character finding when viewed "in the larger context" of his life (IJ at 10).

We discern no clear error in the Immigration Judge's finding that the respondent credibly established that he has been physically present in the United States since April 2003, 10 years prior to the date the Notice to Appear was issued (IJ at 10-11; Exhs. 1, 3E). Section 240A(b)(1)(C) of the Act. In this regard, we discern no clear error in the Immigration Judge's finding that the respondent's trip to Mexico from November 2011 until December 2012, did not interrupt his period of continuous physical presence (IJ at 8, 10-11). Section 240A(d)(2) of the Act.

We also agree with the Immigration Judge that the respondent established that his 8-year-old United States citizen son will suffer exceptional and extremely unusual hardship if the respondent is removed to Mexico given the emotional trauma and financial hardship shown on this record (IJ at 4-8, 11-13; Exh. 3F). *See Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002).

Finally, we are unpersuaded by the DHS's arguments on appeal that the respondent is not entitled to relief from removal as a matter of discretion. The DHS cites the fact that the respondent was arrested, but fails to add that the respondent was acquitted by a jury (Exh. 3D). We are satisfied that the positive equities presented on this record outweigh the negative. Accordingly, the following order is entered.

ORDER: The DHS's appeal is dismissed.

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