U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: X[redacted]-F[redacted], J[redacted] L[redacted]

A[redacted]-135

Date of this notice: 11/30/2018

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:
Kelly, Edward F.

Mailed:
Userteam: Docket

File: A[redacted]-135 – Oakdale, LA

Date: NOV 30 2018

In re: J[redacted] L[redacted] X[redacted]-F[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brandon E. Davis, Esquire

ON BEHALF OF DHS: Gary P. Martin
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(b) of the Act

The Department of Homeland Security (DHS) has appealed the Immigration Judge's October 23, 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 respondent has filed a brief in opposition to the appeal. The DHS's appeal will be dismissed and the record will be remanded for the necessary background security checks.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We do not conclude that the Immigration Judge's decision contains legal error or clearly erroneous findings of fact. The Immigration Judge found that the respondent has a single conviction for Driving Under the Influence (IJ at 3). After consideration of the conviction records submitted (Ex. 3) and the respondent's testimony (Tr. at 46-49), the Immigration Judge concluded that the respondent does not face a statutory bar to relief as a result of his criminal history. While the DHS emphasizes that the respondent may have faced an additional charge in connection with the DUI incident, *see* DHS Br. at 5-7, we do not discern clear error in the Immigration Judge's finding that the respondent has not incurred a conviction barring his application for relief. We are also unpersuaded by the DHS's argument that the Immigration Judge erred in finding that the respondent established that his removal would result in hardship to the older of his United States citizen children reaching the standard set forth in section 240A(b)(1)(D) of the Act. *See* DHS Br. at 7-9. In making this determination, the Immigration Judge found that the child has a moderate developmental disability and that the respondent, who became disabled due to a workplace accident, is the primary caretaker of this child and another daughter while his wife works (IJ at 4-5). The Immigration Judge also concluded that the respondent's disability would prevent him from contributing to his daughter's welfare if he is removed from the United States (IJ at 5-6). After consideration of the record before us, we are not persuaded that the Immigration Judge erred in finding that the hardship present in this case rises to the level of exceptional and extremely unusual. *See Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).

We have considered, but are not persuaded by, the DHS's argument that the Immigration Judge erred in granting relief as a matter of discretion. *See generally* section 240(c)(4)(A)(ii) of the Act, 8 U.S.C. § 1229a(c)(4)(A)(ii). The Immigration Judge considered both the negative factors, including the respondent's DUI conviction, and equities present in this case and concluded that the respondent merits cancellation of removal in the exercise of discretion. *See Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998). After review of the Immigration Judge's decision, with deference to the Immigration Judge's findings of fact, we affirm this determination.

For the aforementioned reasons, the DHS's appeal will be dismissed. The record before us does not indicate whether the required background investigations are current and the record will therefore be remanded for any necessary updates. *See* 8 C.F.R. § 1003.1(d)(6).

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