



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: V [REDACTED], D [REDACTED]

A [REDACTED]-863

Date of this notice: 3/26/2020

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:
Donovan, Teresa L.
Wilson, Earle B.
Greer, Anne J.

Userteam: Docket

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Falls Church, Virginia 22041

File: A-863 – Harlingen, TX

Date: **MAR 26 2020**

In re: D- V- a.k.a. -

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jose M. Martinez, Esquire

ON BEHALF OF DHS: Christine H. Kim
Assistant Chief Counsel

APPLICATION: Cancellation of removal for non-permanent residents; voluntary departure

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's March 21, 2018, decision denying her application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and voluntary departure under section 240B of the Act, 8 U.S.C. § 1229c. The appeal will be sustained, the respondent will be found eligible for cancellation of removal, and the record will be remanded to the Immigration Judge for any necessary background and security investigations.

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 the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found the respondent met the requirements for continuous physical presence, good moral character, and had no disqualifying criminal convictions (IJ at 3). The basis for denial was that the respondent had not shown that her United States citizen daughter or son would suffer exceptional and extremely unusual hardship (IJ at 3-6).

The Immigration Judge considered hardship to the respondent's 2 United States citizen children. The respondent's children are fully supported by the respondent's income from the Social Security Administration (IJ at 4; Tr. at 46). The respondent is separated from their father, and she testified that he does not provide any support to the children (IJ at 4, Tr. at 26, 55). The respondent is in the end stages of renal failure, and must receive dialysis three times a week or else her condition is fatal (Tr. at 49, Exh. 3 at 1). She also testified that she has diabetes for which she needs insulin, and is currently on the waiting list for a kidney transplant (Tr. at 31, 48). The respondent stated that if she were removed to Mexico, her children would accompany her (IJ at 4; Tr. at 37).

We recognize the Immigration Judge's determination that the respondent did not establish that she could not receive dialysis in Mexico, and his findings concerning the other family members living in Mexico and the respondent's land ownership (IJ at 4). However, the difficulty placed on a qualifying relative to find critical medical care for the respondent upon their arrival to Mexico

without disruption, in addition to determining how to financially support their family, constitutes hardship that is "substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here." *Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001). Therefore, upon our de novo review, we find that these factors establish that the hardship to a qualifying relative would be exceptional and extremely unusual.

In light of the factors discussed above, and given the lack of any significant negative factors, we also conclude that the respondent warrants cancellation of removal as a matter of discretion. Because the respondent is eligible for and deserving of the relief sought, we will sustain the appeal. We will remand the matter to allow the Department of Homeland Security to complete the necessary background checks.¹

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondent is eligible for, and merits, cancellation of removal under section 240A(b)(1) of the Act.

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

¹ As we determine that the respondent is statutorily eligible for cancellation of removal, we need not discuss the Immigration Judge's denial of the respondent's request for voluntary departure.