U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: M[redacted]-V[redacted], R[redacted] **A [redacted]-106**

Date of this notice: 9/12/2019

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:
Wendtland, Linda S.

SchwarzA
Userteam: Docket

File: A[redacted]-106 – New York, NY Date: SEP 12 2019

In re: R[redacted] M[redacted]-V[redacted] a.k.a.[redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Hannah McCrea, Esquire

APPLICATION: Remand; cancellation of removal

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's February 25, 2019, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). In addition, the respondent moves to remand based on his claim that his former attorney provided him with ineffective assistance of counsel. The motion will be granted and the record will be remanded for further proceedings.

This Board reviews the Immigration Judge's factual findings, including credibility findings and predictions as to the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge held that the respondent did not establish that his removal would cause exceptional and extremely unusual hardship to his three qualifying relatives: his United States citizen sons born on January 25, 2010, March 17, 2013, and July 5, 2017 (IJ at 5-6; Exh. 9, Tab C). *See* section 240A(b)(1)(D) of the Act; 8 C.F.R. § 1240.8(d); *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 (BIA 2001). The respondent has not identified error in this ruling, but instead claimed that his former attorney prejudiced him by not adequately preparing him for the hearing and presenting evidence relevant to the hardship question.

The respondent has submitted a personal declaration, as well as a declaration in which his former counsel has responded to the allegations against him (Respondent's Br. and Mot., Tabs A-B). Thus, the respondent has substantially complied with the procedural requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). *See Zheng v. U.S. Dep't of Justice*, 409 F.3d 43, 47 (2d Cir. 2005) (requiring at least substantial compliance with *Matter of Lozada*).

Furthermore, the respondent's former attorney admits that he committed ineffective assistance of counsel by: (1) not instructing the respondent to have his children evaluated in connection with health concerns that the respondent described to him; (2) not filing the respondent's application for cancellation of removal and supporting evidence in advance of the February 11, 2019, "call up" deadline set by the Immigration Judge; (3) not renewing his motion for a continuance during the merits hearing on February 25, 2019; and (4) not requesting a bond hearing (Respondent's

Br. and Mot., Tab B). The respondent also has submitted corroborating evidence showing that his middle child has been evaluated for speech issues and psychological concerns. Given former counsel's admission that he did not arrange for the production of reasonably available hardship evidence and the respondent's presentation of such evidence on appeal, we conclude that the respondent has established the prejudice necessary to support an ineffective assistance of counsel claim. *See Debeatham v. Holder*, 602 F.3d 481, 485 (2d Cir. 2010).

For these reasons, we will grant the respondent's motion to remand.[1] On remand, the Immigration Judge should evaluate the evidence submitted with the respondent's brief and motion. In addition, the parties should be afforded the opportunity to present additional evidence and argument. Further, in light of the respondent's claim that his former counsel did not discuss voluntary departure with him (Respondent's Br. and Mot. at 13), the respondent should be allowed to determine whether he wishes to apply for voluntary departure. The Immigration Judge will then issue a new decision concerning the respondent's application(s) for relief.

Accordingly, the following order is entered.

ORDER: The respondent's motion is granted, and the record is remanded for further proceedings and the entry of a new decision consistent with this opinion.

Linda S. Wendtland
FOR THE BOARD

[1] Therefore, we need not decide whether the Immigration Judge erred in denying the motion of the respondent's former counsel for a continuance (Respondent's Br. at 17-18).