



**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] A [REDACTED], J [REDACTED] A [REDACTED] ... A [REDACTED]-369**

**Date of this notice: 4/18/2019**

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:  
Liebmann, Beth S.  
Adkins-Blanch, Charles K.  
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

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File: [REDACTED]-369 – Dallas, TX

Date: **APR 18 2019**

In re: J [REDACTED] A [REDACTED] M [REDACTED] A [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ali A. Crocker, Esquire

ON BEHALF OF DHS: Judson J. Davis  
Senior Attorney

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

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's October 25, 2018, decision denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security (DHS) opposes the appeal. The appeal will be sustained, and the record will be remanded for further proceedings.

We review findings of fact, including credibility determinations, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, including whether the parties have met the relevant burden of proof, and issues of discretion under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The DHS conceded, and the Immigration Judge determined, that the respondent established the requisite continuous physical presence and good moral character for purposes of demonstrating his eligibility for cancellation of removal (IJ at 10). The Immigration Judge further determined that one of the respondent's United States citizen children, who has been diagnosed with major depressive disorder, would suffer exceptional and extremely unusual hardship upon the respondent's removal (IJ at 10-11; Exh. 4, Tab C). However, the Immigration Judge denied the respondent's application for cancellation of removal in an exercise of discretion (IJ at 14).

Upon de novo review, we conclude that the respondent has demonstrated that he warrants a favorable exercise of discretion for purposes of cancellation of removal. *See Matter of C-V-T-*, 22 I&N Dec. 7, 10 (BIA 1998) (explaining that in making discretionary determinations, we weigh the favorable and adverse factors presented to decide whether on balance, the "totality of the evidence before us" indicates that the respondent has adequately demonstrated that he or she warrants a favorable exercise of discretion). While this is a close case, we conclude that on balance, in making his discretionary determination, the Immigration Judge did not give sufficient weight to the respondent's significant equities, including his long-term residence in the United States; his consistent work history; his family ties in this country, including his lawful permanent resident mother and siblings, and five United States citizen children, all of whom are minors; and the humanitarian factors presented in this case.

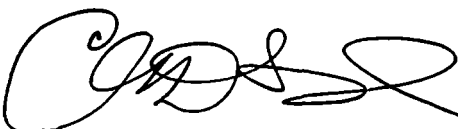
The respondent has admitted that he has a problem with alcohol and has indicated his commitment to seeking help and remaining sober (Tr. at 65-66). The respondent has sought help for his alcohol problem in the past, and remained sober for three years while attending Alcoholics Anonymous meetings (IJ at 5; Tr. at 65-66). The respondent, who has the support of his family and his employer, has submitted documentary evidence establishing that he has the opportunity to participate in a six-month in-patient alcohol treatment program upon his release from detention, and his family has indicated to the court that they will ensure that he enrolls in the program (IJ at 11-14; Tr. at 61-66; Exh. 5). The Immigration Judge's conclusion that the respondent's stated commitment to addressing his alcohol problem is "more of a jailhouse conversion than a true rehabilitation or repentance" is not altogether unreasonable; however, given his finding that the respondent testified credibly, we are inclined to credit the respondent's evidence and testimony in this regard (IJ at 5, 12). The respondent's drunk driving cannot be condoned or minimized. However, when the evidence is considered as a whole and the negative factors are properly balanced against the significant equities presented, the record supports a finding that the respondent merits a favorable exercise of discretion in this matter.

Finally, we caution the respondent that he is statutorily precluded from being granted cancellation of removal again in the future. *See* section 240A(c)(6) of the Act. Thus, he is advised that any future criminal activity on his part will likely result in his removal from the United States.

Accordingly, the following orders will be entered.

ORDER: The respondent's 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).

  
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FOR THE BOARD