



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: T [REDACTED] C [REDACTED], J [REDACTED] A [REDACTED]**

**A [REDACTED]-039**

**Date of this notice: 12/16/2019**

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:  
Adkins-Blanch, Charles K.

Userteam: Docket

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*RL*

Falls Church, Virginia 22041

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File: A-039 – Los Angeles, CA

Date: **DEC 16 2019**

In re: J- A- T- C-

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Shan D. Potts, Esquire

APPLICATION: Special-rule cancellation of removal under section 240A(b)(2) of the Act

This case is before the Board pursuant to an August 22, 2019, order of the United States Court of Appeals for the Ninth Circuit which granted the Government's motion to remand. In its motion, the Government sought remand for the Board to consider whether additional fact-finding is needed, including whether the respondent established that alien was battered or subjected to extreme cruelty. The Government also sought remand for the Board to further consider the respondent's claim that he was deprived of Due Process because the Immigration Judge did not inform him of the requirements for special-rule cancellation under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2), or develop the record regarding the respondent's eligibility for such relief.

An Immigration Judge is required to advise persons in removal proceedings of relief from removal for which they appear eligible. 8 C.F.R. § 12401.11(a)(2). *See also C.J.L.G. v. Barr*, 923 F.3d 622, 627 (9th Cir. 2019) (stating that when the facts before the Immigration Judge raise a reasonable possibility of eligibility, the duty to advise a person of the eligibility for relief is excused only when the person's eligibility for that relief is not plausible); *Moran-Enriquez v. INS*, 884 F.2d 420, 423 (9th Cir. 1989) (holding that the standard requires that the facts before an Immigration Judge indicate a reasonable possibility of eligibility for relief). In the present case, the record reveals that the respondent was advised of the requirements for, and questioned regarding his eligibility for non-LPR cancellation of removal under section 240A(b)(1) of the Act. Tr. at 60-73, 114-17, 120-21, 123-24, 128-30, 136-37, 169-72, 186. In his decision, the Immigration Judge found the respondent ineligible for cancellation of removal under section 240A(b)(1) due to a lack of a qualifying relative. I.J. at 11.

However, the Immigration Judge did not advise the respondent of the requirements for special-rule cancellation under section 240A(b)(2) of the Act for aliens who have been battered or subjected to extreme cruelty although the then pro se respondent had stated that he had been abused by his step-father while a minor and that his mother had filed an I-360 and listed him on it.<sup>1</sup> Tr. at 41-43, 100-06, 161-64, 169-72. The respondent was not questioned further about the abuse. The record further reflects speculation that the respondent could not derive status from his

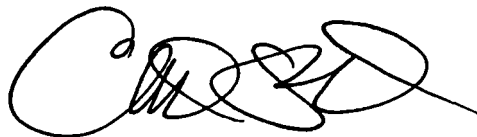
<sup>1</sup> At his final hearing, the Department of Homeland Security (DHS) attorney stated that the respondent's mother's I-360 had been approved but her application for adjustment of status was pending and the latest action on it involved background checks. Tr. at 169.

mother's I-360 application and that that was why the respondent independently filed an I-360, which had been denied. Tr. at 42-43. ), In his decision, the Immigration Judge concluded, without analysis, that the respondent had not established that he had been battered or subjected to extreme cruelty (I.J. at 11) but neither the record nor the decision indicates that special-rule cancellation was not plausible in light of what facts were before the Immigration Judge.

Post-remand, the respondent has filed a motion to remand for further fact-finding and development of the record. No response has been received from the Department of Homeland Security (DHS). As the record reflects that the respondent was not advised of the eligibility requirement for special-rule cancellation or questioned about his eligibility for such relief, as discussed above, the motion will be granted and the record remanded. At the remanded hearing, the respondent continues to bear the burden of establishing his eligibility for relief and that he merits in the exercise of discretion any relief for which he may be eligible. The Board expresses no opinion regarding the outcome of the respondent's proceedings.

Accordingly, the following order will be entered:

ORDER: The motion to remand is granted and the record is remanded for further proceedings and the entry of a new decision.



FOR THE BOARD