U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Luquette, Logan
Anderson Orozco, PLLC
PO Box 666
Gulfport, MS 39502

DHS/ICE Office of Chief Counsel - OAK
1010 East Whatley Road
Oakdale, LA 71463-1128

Name: G[redacted]-G[redacted], E[redacted] A[redacted]

A [redacted]-882

Date of this notice: 2/4/2019

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:
Mann, Ana
Adkins-Blanch, Charles K.
Kelly, Edward F.

Userteam: Docket

File: A[redacted]-882 – Oakdale, LA Date: FEB - 4 2019

In re: E[redacted] A[redacted] G[redacted]-G[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Logan Luquette, Esquire

APPLICATION: Cancellation of removal under section 240A(b)(1) of the Act

The respondent, a native and citizen of Honduras, has appealed from the Immigration Judge's decision dated September 5, 2018, denying the relief of cancellation of removal pursuant to section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security (DHS) did not file a response to the appeal. The record will be remanded for further proceedings and for the entry of a new decision.

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). It is the respondent's burden to establish eligibility for relief from removal. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d).

The Immigration Judge determined that the respondent did not show that his removal would result in exceptional and extremely unusual hardship to his United States citizen son (IJ at 5-6; Tr. at 34-40). *See Matter of Andazola*, 23 I&N Dec. 319, 323-24 (BIA 2002) (discussing exceptional and extremely unusual hardship standard); *Matter of Monreal*, 23 I&N Dec. 56, 64-65 (BIA 2001); *compare Matter of Recinas*, 23 I&N Dec. 467, 470-72 (BIA 2002).

On appeal, the respondent argues that the Immigration Judge did not give proper weight to the evidence of hardship to his United States citizen son (Respondent's Br. at 10-13). Specifically, the respondent argues that his son suffers from Autism Spectrum Disorder, a serious developmental disorder that impairs his ability to communicate and interact and that the Immigration Judge erred by concluding that there was no diagnosis of autism before the court (*Id.* at 11-12; IJ at 3). The respondent contends that the Immigration Judge erred by failing to consider that his son was diagnosed with Autism Spectrum Disorder "Provisional," with Speech Language Disturbance and Global Developmental Delay (Respondent's Br. at 12; Eastern Shore Developmental Clinic, Autism Diagnostic Observation, 8/22/2017). With his appeal brief, the respondent submitted a letter from Dr. Julie Wiggins, dated October 11, 2018, stating that the respondent's son has been diagnosed with Autism Spectrum Disorder with Accompanying Speech Language Disturbance and a Global Developmental Delay (Respondent's Br., Exhibit E). The respondent asserts that his appeal should be sustained.

The Immigration Judge found that the respondent presented insufficient proof that his removal to Honduras "would result in exceptional and extremely unusual hardship" to his son, a United

States citizen (IJ at 5-6). The respondent indicated that his son would not accompany him to Honduras (IJ at 4; Tr. at 46). In assessing hardship, the Immigration Judge acknowledged a letter signed by Eastern Shore Developmental Clinic Therapists, dated in August 22, 2017, but did not give the diagnosis provided in the letter much weight because it was a provisional diagnosis, "which is almost the same thing as there is a concern for autism" (IJ at 3). However, the Autism Diagnostic Observation test and report contains detailed descriptions of the child's behavior, lack of speech, and unusual sensory interests that are the basis of the diagnosis (Eastern Shore Developmental Clinic, Autism Diagnostic Observation, 8/22/2017). The Individual Education Program plan documents for the respondent's son are consistent with the diagnosis of autism spectrum disorder (Exh. 2, Tab E). Additionally, the respondent submitted evidence on appeal confirming the diagnosis (Respondent's Br., Exhibit E). Therefore, the Immigration Judge erred by discounting the autism diagnosis solely because it was a provisional diagnosis.

The Immigration Judge also denied the respondent's request for cancellation of removal under section 240A(b)(1) of the Act as a matter of discretion. The respondent's positive discretionary factors include his length of residence in the United States (12 years), his United States citizen child, and letters of support from family, friends, and other members of the community (IJ at 6; Exh. 4). Regarding the negative discretionary factors, the Immigration Judge noted that the respondent pled guilty to driving under the influence in May 2018, did not present evidence of rehabilitation, and he testified that he and his partner had income of $900 per week but received Medicaid for the care of their son (IJ at 6). The respondent testified that he made a mistake, he wanted a second chance, and that he would not make the same mistake (Tr. at 33). The respondent has been detained since his May 2018 driving under the influence arrest. The respondent argues that he established rehabilitation through his testimony that he would not make the mistake in the future and noted that his continued incarceration prevented him from showing other indications of rehabilitation (Respondent's Br. at 17). Upon de novo review, we conclude that the respondent demonstrated that the discretionary denial of his application for relief is not warranted in this case (IJ at 6). *Matter of C-V-T-*, 22 I&N Dec. 7, 11-12 (BIA 1998); *Matter of Marin*, 16 I&N Dec. 581, 586-87 (BIA 1978).

Moreover, in these circumstances given our limited fact-finding ability, the record will be remanded to the Immigration Judge for further findings of fact regarding the confirmed autism diagnosis relating to the respondent's son and a new assessment of hardship in light of the diagnosis.[1] *See* 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may not engage in fact-finding in the course of deciding appeals); *see also Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (stating that the Board has limited fact-finding ability on appeal, which heightens the need for Immigration Judges to include in their decisions clear and complete findings of fact that are supported by the record and are in compliance with controlling law). Accordingly, the following order will be entered.

[1] As a cancellation application is an ongoing application, upon remand, the respondent may submit new evidence regarding hardship to his qualifying relative at that time.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion, and for the entry of a new decision.

FOR THE BOARD