



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*

**Devine, Mark John
Law Office of Mark J Devine
679 St. Andrews Boulevard
Charleston, SC 29407**

**DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303**

Name: L [REDACTED] S [REDACTED], R [REDACTED] P [REDACTED] A [REDACTED]-262

Date of this notice: 8/28/2019

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:
Kendall Clark, Molly

U.S. Department of Justice
User team: Docket

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PL

Falls Church, Virginia 22041

File: [REDACTED]-262 – Atlanta, GA

Date: **AUG 28 2019**

In re: R [REDACTED] P [REDACTED] L [REDACTED] S [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark J. Devine, Esquire

APPLICATION: Cancellation of removal for certain nonpermanent residents

The respondent, a native and citizen of Mexico, appeals an Immigration Judge's April 2, 2019, decision denying him cancellation of removal for certain nonpermanent residents under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The record will be remanded.

We review the Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). All other issues, including issues of law, judgment, and discretion, we review de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondent met the continuous physical presence requirement for cancellation of removal, but found that he lacked good moral character under the "catch-all provision of 101(f) of the Immigration and Nationality Act, 8 U.S.C. § 1101(f), found that he had not shown exceptional and extremely unusual hardship to a qualifying relative, and found that the respondent was not deserving of relief in the exercise of discretion.

We acknowledge the Immigration Judge's concerns that the respondent has not filed income tax returns, and has some immigration and driving without a license violations, though some of these (as the Immigration Judge found) were before the 10 year period of good moral character required for cancellation. In 2010 he had a conviction for domestic violence after an altercation, which he described as verbal, with the mother of his child. However, as the Immigration Judge noted in his decision, in assessing good moral character and discretion, positive factors should be considered as well as adverse factors, and hardship should be considered in weighing all factors.

In this case, the Immigration Judge did not adequately discuss or consider the hardship factors presented. These include the fact that the respondent has physical and legal custody of his United States citizen child because the child's biological mother has little to do with the child. She is allowed only supervised visits and apparently has gone months without seeing her child. The child, who is 10 years old, has been seeing a therapist, suffers from a mood disorder and has other mental health issues, and is taking psychiatric medications.

The respondent's United States citizen wife was injured at work in 2016, and has been unable to return to her job as a certified nursing assistant. In the respondent's absence since his detention, she has been struggling to provide for herself and her stepchild, who has been acting out in the absence of his father. These are all factors that should have been considered by the Immigration

Judge in assessing good moral character under the catch-all provision and discretion. The respondent's long residence here and his steady employment record should also have been taken into account. As the Immigration Judge did not consider all factors, as required, a remand is necessary. On remand, the parties will have the opportunity to make arguments and present additional evidence as appropriate, and the Immigration Judge should issue a new decision consistent with this opinion. A further and more complete analysis of the exceptional and extremely unusual hardship requirement should also be made.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this decision.


FOR THE BOARD