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

Griffiths, Jeff
Law office of Jeff Griffiths
870 Market Street
Suite 763
San Francisco, CA 94102

DHS/ICE Office of Chief Counsel - SFR
P.O. Box 26449
San Francisco, CA 94126-6449

Name: Q[redacted] R[redacted], M[redacted] **A [redacted]-384**

Date of this notice: 10/3/2018

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:
Kelly, Edward F.

Userteam: Docket

File: [redacted]384 – San Francisco, CA Date: OCT - 3 2018

In re: M[redacted] Q[redacted] R[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeff Griffiths, Esquire

ON BEHALF OF DHS: Cynthia A. Gutierrez
Assistant Chief Counsel

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

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated August 31, 2017, which denied his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and indicated that he did not request voluntary departure under section 240B of the Act, 8 U.S.C. § 1229c.[1] The parties have provided arguments on appeal. The record will be remanded.

The record shows that the respondent testified at a merits hearing on August 24, 2016, about matters including his long-time lawful permanent resident girlfriend and her children (IJ at 1, 3; Exh. 4 at 79). The Immigration Judge reserved a decision in the case, noting that the respondent could file a motion to reopen if his circumstances changed (IJ at 1; Tr. at 82-83, 103). In the August 31, 2017, decision, the Immigration Judge found that the respondent was not eligible for cancellation of removal because he did not meet his burden to prove that his removal to Mexico would result in exceptional and extremely unusual hardship to his United States citizen son, his only qualifying relative, and that he did not request voluntary departure in the alternative (IJ at 3-4). She also noted that there were negative discretionary issues that were cause for concern, but

[1] At the conclusion of the merits hearing on August 24, 2016, an Immigration Judge indicated that a decision would be issued at a later, unspecified date (Tr. at 103-04). *See* section 240A(e) of the Act; 8 C.F.R. § 1240.21(c)(1) (directing immigration judges to reserve granting or denying applications for cancellation of removal until such time as a grant becomes available in a subsequent fiscal year). As that Immigration Judge was no longer available to complete her assigned cases, this case was reassigned to another Immigration Judge who signed and issued a written decision on August 31, 2017. The Immigration Judge also included a statement in the decision indicating that she had familiarized herself with the record, as required by the regulations (IJ at 5). *See* 8 C.F.R. §§ 1240.1(b) and 1246.4.

did not explicitly deny relief in the exercise of discretion, contrary to the contention in the brief for DHS. [2]

On September 28, 2017, as previously suggested by the Immigration Judge, the respondent filed with the Immigration Court a timely motion to reopen, with new evidence, including evidence of his divorce, which was final on April 21, 2017; his marriage to his girlfriend on August 19, 2017; his now spouse's medical conditions; and his now step-child's educational and behavioral issues. However, because he also filed a Notice of Appeal from the August 31, 2017, decision, jurisdiction over the case had vested with the Board. *See* 8 C.F.R. §§ 1003.3(a)(1), 1003.23(b)(1). On appeal, the respondent argues that the Immigration Judge should consider the hardship to all of his now-qualifying relatives, and he points out correctly that he did request voluntary departure (Exh. 4 at 73). Respondent's Br. at 2, 6-7.

Considering the circumstances and evidence now of record, we find that a remand is appropriate so that the Immigration Judge may consider the current situation of the respondent and his qualifying relatives as well as the respondent's request for voluntary departure. Accordingly, the following order will be entered.

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

[2] The Department of Homeland Security states on appeal that the Immigration Judge also denied cancellation of removal in the exercise of discretion. However, the decision states that several issues caused the Court "to consider denying relief in the exercise of discretion" and that the negative discretionary issues were "cause for concern" (IJ at 4). The Board does not read these observations to constitute a denial in the exercise of discretion.