



U.S. Department of Justice

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*Board of Immigration Appeals
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Name: C [REDACTED]-S [REDACTED], S [REDACTED]

A [REDACTED]-001

Date of this notice: 9/4/2019

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:
Noferi, Mark

L. [REDACTED]
User team: Docket

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PL

Falls Church, Virginia 22041

File: A-001 – San Francisco, CA

Date: **SEP - 4 2019**

In re: S-C-S

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Victor M. Castro, Esquire

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

The respondent, a native and citizen of Mexico, appeals the decision of the Immigration Judge dated February 1, 2018, denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The record will be remanded.

We review findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii). The respondent, as an applicant for relief under the Act, bears the burden of establishing that he is eligible for, and deserving of, all relief sought. 8 C.F.R. § 1240.8(d); section 240(c)(4) of the Act.

At issue on appeal is the Immigration Judge's determination that the respondent did not establish that his United States citizen children would suffer exceptional and extremely unusual hardship upon his removal to Mexico (IJ at 18-19).

The respondent's qualifying relatives are his United States citizen children, ages 19, 12, and 7 years old at the time of the hearing (IJ at 14). The respondent is the sole financial provider for his family, and earns about \$4,000/month working 6 days a week as a landscaper (IJ at 6; Tr. at 65-66, 71). The respondent has never been arrested, charged, or convicted of a crime (IJ at 6). When asked if his children would accompany him to Mexico if he is removed, the respondent stated that "I would not have a place to take them" (Tr. at 75; IJ at 7). The respondent's counsel represented that "I do think that the children will be staying in the United States should an order of removal be issued" (Tr. at 95; IJ at 7). The respondent's wife does not work because she suffers from depression, although she does not receive treatment for her depression (IJ at 6; Tr. at 26, 72-73, 86). The respondent's father and siblings live in the United States, and he testified that his children have a close relationship with his family members (IJ at 5; Tr. at 60, 74, 80-82).

The respondent submitted reports from a licensed marriage and family therapist, who also testified, indicating that all three children present mental health issues related to the possible separation from their father (IJ at 7-8; Exh. 4). The therapist, who was retained for a mental health assessment for each child as to how they would be affected by the loss of their father, conducted five sessions with the family over the course of a month (IJ at 8; Tr. at 23-25, 27-28; Exh. 4, at 50-55, 59-63, 180-85). The first 50 minute session included the entire family, and during the second session the therapist met with each child for 10-15 minutes (IJ at 9-10). During the third session the therapist met with the two youngest children for 50 minutes each. The fourth session included

a session with each of the youngest children for 50 minutes and the oldest daughter for 15 minutes, and the last session included separate meetings of 20 to 25 minutes with each child (IJ at 10).

The therapist testified that the three children presented symptoms different in severity than the typical case where a child is facing separation (IJ at 7; Tr. at 51-52). The therapist diagnosed the respondent's oldest daughter, then 19 years old, with generalized anxiety disorder, panic attacks, and major depressive disorder (IJ at 9, 14, 15; Tr. at 38-39; Exh. 4, at 180-85). The therapist indicated that the respondent's oldest daughter reported suicidal ideation. For example, three to four months prior to the Immigration Judge's decision, when the respondent's oldest daughter and wife were crossing the Bay Bridge, the respondent's oldest daughter told her mother to stop because she wanted to throw herself off the bridge. The therapist reported that the oldest daughter thinks about suicide all the time (IJ at 9, 12; Tr. at 41, 49, 53-54; Exh. 4, at 181). His oldest daughter works and is preparing for college (IJ at 9; Tr. at 39-40). The therapist reported that some of the oldest daughter's mental health issues may potentially be related to her mother's diagnosis of depression, and the expectation is that her mother will rely on her for emotional and financial assistance if the respondent is removed (IJ at 9; Tr. at 40).

The respondent's son, then 12 years old, presented symptoms of depression and anxiety, particularly, self-harm in the form of hitting his head against the wall, which started after respondent was placed into removal proceedings. The therapist diagnosed respondent's son with unspecified depressive disorder with anxious distress categorized as severe, presenting four or five symptoms (IJ at 7, 9-11, 14; Tr. at 32-35, 52; Exh. 4, at 51-52). The therapist testified that respondent's son needs ongoing mental health treatment (IJ at 7). The respondent's youngest daughter, then 7 years old, was diagnosed with separation and anxiety disorder (IJ at 8, 15; Tr. at 44-45, 52; Exh. 4, at 59-63). The therapist reported that the youngest daughter was very sad, and had a highly unusual flat affect in talking about her sadness (IJ at 8, 12; Tr. at 45-46). None of the children currently take medication for mental health related issues (IJ at 11; Tr. at 55-56, 82, 86-87).

The therapist also testified that the respondent's wife could not provide a stable home environment for her children if the respondent is removed, because the respondent's wife is not emotionally stable (IJ at 8-9; Tr. at 46-48).

We appreciate the Immigration Judge's detailed factual findings, and do not discern clear error in them. However, we conclude that remand is warranted for additional consideration of the hardship element. On remand, the Immigration Judge shall assess whether the cumulative hardships presented by the respondent, including the financial hardship that may be associated with his return to Mexico, and resulting emotional hardship in turn, rises to the level of "exceptional and extremely unusual hardship" to his qualifying relatives. *See Matter of Recinas*, 23 I&N Dec. 467, 472 (BIA 2002) (the assessment of hardship factors requires a "cumulative" analysis). For example, in *Matter of Recinas*, we found significant that the U.S. citizen children were entirely dependent on the parent facing removal for financial support, and also considered the resulting emotional hardship if such financial support was diminished. *Id.* at 471-72.

In light of the foregoing, we will remand the record to the Immigration Judge for further consideration and for entry of a new decision. The parties should be permitted to submit additional evidence in the remanded proceedings. The following order will be entered.

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

A handwritten signature in black ink, appearing to be "M. H.", is written over a horizontal line.

FOR THE BOARD