U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: B[redacted] V[redacted], M[redacted] A[redacted]... **A [redacted]-385**

Date of this notice: 5/24/2018

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.
Mann, Ana
Snow, Thomas G

Userteam: Docket

File: [redacted] 385 – Lumpkin, GA

Date: MAY 24 2018

In re: M[redacted] A[redacted] B[redacted] V[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Martin M. Rosenbluth, Esquire

ON BEHALF OF DHS: Matthew E. Burns
Assistant Chief Counsel

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

The Department of Homeland Security ("DHS") appeals the decision of the Immigration Judge, dated January 8, 2018, granting the respondent's application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The respondent, a native and citizen of Mexico, is opposed to the respondent's appeal.[1] We will dismiss the DHS's appeal and remand the record to the Immigration Judge for the limited purpose of updating the required background checks.

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).

We affirm the Immigration Judge's decision. We have considered the DHS's argument that the respondent has not established that his removal from the United States would result in the requisite level of hardship to a qualifying relative. Nonetheless, we agree with the Immigration Judge that, upon the consideration of the totality of the record, the respondent has established that his removal from the United States will result in exceptional and extremely unusual hardship to a qualifying relative (IJ at 4-5). Section 240A(b)(1)(D) of the Act; *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002). Prior to his detention, the respondent was the primary financial provider for his six United States citizen children (IJ at 4). We recognize that, if the respondent is removed from the United States, his children would remain in this country with their mother. *Matter of Calderon-Hernandez*, 25 I&N Dec. 885, 886 (BIA 2012) (holding that, where a child remains in the United States upon a parent's removal. it is generally reasonable to assume that the child will be adequately cared for and supported by the remaining parent). However, the respondent's spouse, who has diabetes, and his children were required to move under threat of eviction during

[1] The respondent is subject to removal from the United States because he is an alien who is present in this country without being admitted or paroled by an immigration officer or who arrived at any time or place other than as designated by the Attorney General (IJ at 2). Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i).

the course of his detention (IJ at 4). Without the respondent's support, the cost of day-to-day living would likely become prohibitive for his spouse and the level of care required by the children would likely diminish (IJ at 4). As found by the Immigration Judge, it is highly unlikely that that the respondent's spouse would be able to provide both the financial means and the time necessary to adequately care for his children upon his removal (IJ at 4).

For the reasons set forth above, we agree with the Immigration Judge that the respondent has established eligibility for cancellation of removal and that such relief should be granted as a matter of discretion. The respondent has established, upon his removal from the United States, at least one of his six United States citizen children would suffer hardship that is substantially beyond that which would ordinarily be expected to result from an alien's removal from the United States. *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001). Accordingly, the following orders are entered.

ORDER: The Department of Homeland Security's appeal is dismissed.

FURTHER ORDER: FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD