



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: C [REDACTED], D [REDACTED] A [REDACTED]**

**A [REDACTED]-228**

**Date of this notice: 2/25/2019**

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:  
Greer, Anne J.  
Wendtland, Linda S.  
Donovan, Teresa L.

User team: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED]-228 – New York, NY

Date: FEB 25 2019

In re: D [REDACTED] A [REDACTED] C [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark Steven Drucker, Esquire

APPLICATION: Cancellation of removal

The respondent, a native and citizen of the Dominican Republic, has appealed from an Immigration Judge's November 20, 2017, decision denying his application for cancellation of removal pursuant to section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). The Department of Homeland Security has not filed a response to the respondent's appeal. The record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment and all other issues in an appeal of an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was admitted to the United States as a lawful permanent resident on August 22, 1993 (Exh. 1). As the respondent seeks discretionary relief from removal in the form of cancellation of removal under section 240A(a) of the Act, he bears the burden of proving eligibility for relief from removal. *See* section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d).

To determine whether the respondent merits cancellation of removal in discretion, we must balance the adverse factors evidencing his undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether the granting of relief appears in the best interests of this country. *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998). Upon our de novo review, we reverse the Immigration Judge's denial of the respondent's application for cancellation of removal in the exercise of discretion.

The Immigration Judge noted the positive factors of record. In particular, the Immigration Judge noted the respondent's family ties in the United States such as his United States citizen mother and siblings, including a brother serving in the United States military (IJ at 3-4). The respondent is married to a United States citizen, has two United States citizen children who reside with their mothers and to whom he provides financial support, and he also helps to support his three stepchildren (IJ at 3). In addition, he has been employed as a private driver for the last 3 years and has volunteered for Meals on Wheels. The Immigration Judge further noted that the respondent would suffer emotional hardship if separated from his immediate and extended family, as will his wife and children (IJ at 4). On the other hand, the Immigration Judge recognized the

respondent's criminal history, which includes most recently a 2005 conviction for possession of stolen property, as a significant adverse factor (IJ at 5).

The respondent has lived in the United States as a lawful permanent resident for more than 25 years since the age of 12. He has significant family ties here and presented substantial evidence in support of his application, including letters of support from his family and evidence of his volunteer work, including volunteer work the Immigration Judge did not reference with families of deployed soldiers (Exhs. 3I, 3J, and 4). While we recognize the Immigration Judge's concerns about the extent of the respondent's volunteer work and support for his children, as well as rehabilitation, we are satisfied that he has corroborated his volunteer work and care for his children and expressed remorse for his criminal history, which is now remote in time. Considering all the evidence of record, we conclude that the respondent's equities outweigh the negative factors in his case.

For these reasons, we reverse the holding that the respondent has not demonstrated eligibility for cancellation of removal under section 240A(a) of the Act. Should the respondent again be subject to removal in the future, cancellation of removal cannot be granted to him a second time. *See* section 240A(c)(6) of the Act. We will remand the record for completion of the required background checks. In view of our disposition of the case, we need not adjudicate the respondent's remaining appellate arguments at this time.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained, the denial of cancellation of removal is vacated, and the respondent is found eligible for and deserving of this form of relief.

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).

  
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FOR THE BOARD