U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: C[redacted]-M[redacted], E[redacted] **A [redacted]423**

Date of this Notice: 1/25/2021

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:

Goodwin, Deborah K.
Gorman, Stephanie
Pepper, S. Kathleen

Userteam: Docket

File: A[redacted]423 – Tacoma, WA Date: JAN 2 5 2021

In re: E[redacted] C[redacted] M[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brian Patrick Conry, Esquire

ON BEHALF OF DHS: Peter H. Clark
Assistant Chief Counsel

APPLICATION: Cancellation of removal; voluntary departure

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's December 20, 2019, decision denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act. *See* 8 U.S.C. § 1229b(b)(1). Although the Immigration Judge's factual determinations in connection with a cancellation of removal application are reviewed for clear error, whether those facts support a finding of "exceptional and extremely unusual hardship" is a question of law which we review *de novo*. *See* 8 C.F.R. § 1003.1(d)(3). The appeal will be sustained and the record will be remanded to the Immigration Judge.

The respondent has three United States citizen children. His 12-year-old son, [redacted], was recently diagnosed with major depressive disorder (IJ at 10; Exh. 5 at 81). His step-daughter has anxiety as well as asthma, which is controlled with an inhaler (IJ at 4-6; Tr. at 76-77, 99-100, 176-78; Exh. 5 at 87-88, 89-90). The respondent also has a 5-year-old daughter but, as the Immigration Judge found, there is no indication that she suffers from any medical issues (IJ at 12; Tr. at 77-78). The Immigration Judge held that the respondent demonstrated the requisite 10 years of continuous physical presence in the United States, that he has been a person of good moral character during that time, and that he has not been convicted of any disqualifying criminal offenses (IJ at 2-3). *See* section 240A(b(1) of the Act. However, the Immigration Judge also held that the respondent did not demonstrate that, if he is removed to Mexico, his qualifying relatives would suffer exceptional and extremely unusual hardship.

As an initial matter, we note that the Immigration Judge found, based on the evidence presented, that the respondent's family would most likely remain in the United States if he is removed to Mexico (IJ at 14). However, the Immigration Judge also addressed the hardships involved if the respondent's family moves to Mexico with him.

On appeal, the respondent argues that the Immigration Judge erred by holding that his son, [redacted], would not suffer exceptional and extremely unusual hardship if the respondent is removed to Mexico (IJ at 4; Tr. at 43; Respondent's Br. at 20-24). As the Immigration Judge found, [redacted] recently posted a short social media video on TikTok indicating that he wanted to kill himself (IJ at 8-9; Tr. at 68, 70, 166-68). On the video, a song was playing and the words "I should die," were on the screen (IJ at 9). The Immigration Judge stated that it is unclear whether

the words related to the song or to [redacted] (IJ at 8-9). Because he was concerned with [redacted] mental health, the respondent had [redacted] assessed by a mental health professional who testified at the removal hearing and submitted a written report. The Immigration Judge found that [redacted] suffers from major depressive disorder that has worsened because the respondent is detained (IJ at 10-12; Exh. 5 at 81, 84). However, the Immigration Judge noted that [redacted] was not receiving therapy or treatment for this illness. Because the Immigration Judge found that he respondent did not show that [redacted] or his other children would suffer exceptional and extremely unusual hardship if he is removed, the Immigration Judge denied the respondent's application for cancellation of removal.

Contrary to the Immigration Judge's finding, however, it is not significant that, at the time of the removal hearing, [redacted] had not yet been treated for major depressive disorder (IJ at 15). [redacted] created the video shortly before the date of the removal hearing (IJ at 12, 15; Tr. at 104-05). Based on this event, the respondent had serious concerns about [redacted] mental health and had him assessed by a mental health professional, Lonnie Renteria. [redacted] did not receive treatment prior to the hearing because he was only recently diagnosed (IJ at 4, 15).

Moreover, the Immigration Judge also found that [redacted] denied having ongoing suicidal thoughts (IJ at 9; Tr. at 87, 105).[1] Mr. Renteria testified, however, that, because [redacted] felt shamed about the video, he might not want to talk about his feelings and, instead, he might have been "shutting down" (IJ at 10; Tr. at 86, 87, 94-96; Exh. 5 at 84). He said that individuals may deny suicidal thoughts after others learn of them, which is concerning because no one would know if he ultimately planned to harm himself (IJ at 10; Tr. at 86, 94-96, 106). Mr. Renteria said that he is concerned that [redacted] is "really shut down," and will not admit if he starts to demonstrate suicidal behavior (IJ at 10; Tr. at 86, 94, 95-96; Exh. 5 at 84).

Mr. Renteria also reviewed emails sent by [redacted] school, which indicated that [redacted] said that he no longer had suicidal thoughts (IJ at 9). He testified that [redacted] may not be revealing his true feelings and that [redacted]'s denials of suicidal ideation are inconsistent with the results of his psychological tests (IJ at 10; Tr. at 91, 106; Exh. 5 at 80-85). Mr. Renteria concluded based on clinical tests that [redacted] continues to have thoughts about suicide (IJ at 11; Tr. at 90-92, 106). He also testified that any separation from the respondent may exacerbate [redacted]'s symptoms (Tr. at 94).

Further, the Immigration Judge found that the respondent's children are resilient and would be able to adapt if they moved to Mexico with the respondent. However, Mr. Renteria testified that [redacted] is not equipped to be resilient in this regard (IJ at 16; Tr. at 94; Exh. 5 at 84). The Immigration Judge found that the respondent, his spouse, and Mr. Renteria all testified credibly, and he did not make any finding that their testimony, or Mr. Renteria's report should be afforded diminished weight (IJ at 2, 7-12). Nor did the DHS appeal the Immigration Judge's findings in this regard. Therefore, this factual finding is clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3). In

[1] Mr. Renteria testified that there is a distinction between suicidal ideation and actually creating plans for self-harm (Tr. at 86, 109). [redacted] demonstrated suicidal ideation but has apparently not made plans to harm himself.

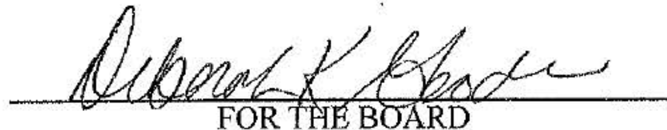
any event, the Immigration Judge found that it is more likely that the children would remain in the United States (IJ at 14).

In addition [redacted]'s major depressive disorder, the respondent's daughter, [redacted], suffers from separation anxiety. Although the respondent's children have health insurance and could seek counseling if they remain in the United States, [redacted]'s major depressive disorder, which we consider a serious health issue, combined with [redacted]'s separation anxiety, both of which will worsen if the respondent is removed from the United States, cumulatively constitute exceptional and extremely unusual hardship under the Act. *Matter of J-J-G-*, 27 I&N Dec. 808, 811 (BIA 2020).

In sum, given the evidence presented, we will reverse the Immigration Judge's conclusion that the respondent has not shown that his qualifying relatives would suffer exceptional and extremely unusual hardship if the respondent is removed from the United States. Therefore, we will sustain the respondent's appeal and remand the record to the Immigration Judge. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained and the Immigration Judge's decision is vacated.

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

Appellate Immigration Judge Stephanie E. Gorman respectfully dissents without opinion.