File: (b)((6) – Arlington, VA Date: JAN – 2 2018

In re: (b)((6) CASTILLO-PEREZ a.k.a. (b)((6) Castillo-Percz

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Victor A. Cuco, Esquire

ON BEHALF OF DHS: Roya Niazi
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The Department of Homeland Security (DHS) has appealed from an Immigration Judge's October 5, 2016, decision granting the respondent cancellation of removal for non-permanent residents under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The respondent has filed a brief in opposition. The DHS appeal will be sustained.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent bears the burden of establishing his eligibility for cancellation of removal. Section 240(c)(4)(A)(i) of the Act. The Immigration Judge found the respondent eligible for cancellation of removal, including that he established good moral character, and that his qualifying relatives would be subject to exceptional and extremely unusual hardship upon his removal. *See Matter of Recinas,* 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001). The DHS has appealed this decision. We are persuaded by the DHS arguments, and additionally determine that the respondent does not warrant a favorable exercise of discretion. We accordingly will reverse the Immigration Judge's decision.

We first address the issue of extremely and exceptional hardship, a conclusion which we review de novo as a question of law. 8 C.F.R. § 1003.1(d)(3)(ii); *Massis v. Mukasey*, 549 F.3d 631, 636 n.6 (4th Cir. 2008) (explaining that whether facts amount to "exceptional and extremely unusual hardship" as required by law is to be reviewed by the Board de novo). The respondent is a native and citizen of Mexico who last entered the United States in 1997 (Exh. 1). The merits hearing on his application was held in January 2015. At that time, the respondent resided with (b)((6) (b)((6) also a native and citizen of Mexico, who was without lawful status in the United States. (b)((6) was not employed, but had previously worked as a housekeeper. The respondent based his hardship claim on (b)((6) . At the time of the hearing, they were, respectively, ages (b)((6) (IJ at 3-6).

(b)((6)

Initially, we consider that (b)((6), and he is therefore no longer a qualifying relative for hardship purposes. *See Matter of Isidro*, 25 I&N Dec. 829 (BIA 2012). While we recognize (b)((6)' laudable achievements in this country, there is no basis for any exception to the eligibility requirements for (b)((6) based on undue or unfair delay. *See Matter of Isidro*, 25 I&N Dec. at 832. In addition, the (b)((6) and therefore (b) is no longer a qualifying relative. *See Matter of Isidro*, 25 I&N Dec. at 829. Moreover, even considering the record at the time of the hearing, we are not convinced that any circumstances existed which would establish the requisite hardship. In this regard, (b)((6) (b)((6) and while (b)((6), there is nothing which indicates that his hardship upon (b)((6) removal would be exceptional and extremely unusual. At the time of the merits hearing, (b)((6) was scheduled to (b)((6) later in 2015, and (b) planned to (b)((6).

In his decision, the Immigration Judge recognized (b)((6), and indicated that even if he (b)((6) by the time his decision was issued, the respondent's remaining (b)((6) would qualify the respondent for cancellation of removal, as they would experience exceptional and extremely unusual hardship (IJ at 9, n.4). The Immigration Judge found that (b)((6), likely would be able to (b)((6) in Mexico and adjust to the Mexican (b)((6) system (IJ at 11).

In analyzing the issue of exceptional and extremely unusual hardship, the Immigration Judge considered two possibilities: that the (b)((6) would accompany him to Mexico, or that they would remain in the United States (IJ at 9).[1] In either case, he found that (b)((6) would experience exceptional and extremely unusual hardship, primarily because of diminished educational and economic opportunities in Mexico, and because of the need for the (b)((6) to work full-time in the United States to support themselves, (b)((6) which would interrupt their pursuit of higher education (IJ at 9-12).

We recognize, as did the Immigration Judge, the emotional and financial hardships that the (b)((6) will endure if the respondent is removed, but we ultimately determine that the evidence does not establish that such hardship is substantially different from, or beyond, that which would normally be expected to result from the removal of an alien with family members in the United States. *Matter of Monreal*, 23 I&N Dec. at 65. If the (b)((6) do accompany him to Mexico, the poor economic conditions and the deprivation of educational opportunities available in the United States, are not sufficient to establish the requisite hardship standard under the relevant case law. *See Matter of Andazola*, 23 I& N Dec. 319 (hardship factors for cancellation not met in case of unmarried mother with United States citizen children notwithstanding poor economic conditions and diminished educational opportunities in Mexico and respondent's lack of family in her home country); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (lack of educational opportunities fails to support finding of extreme

[1] The respondent testified that (b)((6) likely would accompany him to Mexico because "we are [a] very united family" (Tr. at 38). (b)((6) testified that (b)((6) would accompany the respondent (Tr. at 47). (b)((6) testified that "I don't know what to do" and (b)((6) testified that (b) would "probably" accompany (b)((6) to Mexico (Tr. at 55, 62).

(b)((6)

hardship for purposes of suspension of deportation). Regarding the (b)((6) lack of fluency in Spanish, any related problems upon removal are a foreseeable event and do not tip the balance of the hardship equation in the respondent's favor.

Moreover, the (b)((6) have no special health or other issues, and the respondent's concerns about the general violence in Mexico are understandable, but are a foreseeable consequence of being removed to a country with a high level of crime. We also consider that the respondent's employment history includes working at a restaurant, and most recently as a brick mason for a construction company (IJ at 3). He indicated that he would be able to reside with (b)((6) in a house which she owns, and tha(b)((6) also lives in Mexico (Tr. at 34). While the respondent may not be able to earn an equivalent income in Mexico, the record does not establish that he is entirely foreclosed from obtaining employment to support (b)((6) A lower standard of living or reduced economic opportunities generally are insufficient to establish a finding of exceptional and extremely unusual hardship. *See Matter of Andazola*, 23 I&N Dec. at 319. Furthermore, the (b)((6) is a native and citizen of Mexico, and there is no indication that (b) could not resume gainful employment there in order to contribute to the support of (b)((6) . *See* Tr. at 38, 51.

The evidence of record does not indicate that the cumulative difficulties the respondent's (b)((6) may face if he is removed to Mexico would rise to exceptional and extremely unusual hardship. Although(b)((6) is in the most vulnerable position given (b)((6) it does not appear that any hardship he will face will be significantly greater than others in similar situations. We therefore disagree with the Immigration Judge's conclusion that the diminished educational and economic opportunities, and other relevant factors in this case, are sufficient to satisfy the applicable burden. *See Matter of Andazola*, 23 I&N Dec. at 319 (lower standard of living and diminished educational opportunities alone are insufficient to establish exceptional and extremely unusual hardship).

The (b)((6) are United States citizens who are under no legal obligation to depart the United States, and they will be able to visit him in Mexico and return to the United States. *Matter of A-K-*, 24 I&N Dec. 275, 277 (BIA 2007). Although we recognize that the (b)((6) (b)((6) his status as a United States citizen means that he will have the option of returning to this country in the future if he goes to Mexico. Finally, any possible separation anxiety or similar difficulty is a common result of removal of (b)((6) and does not rise to the requisite level of hardship. *Matter of Pilch*, 21 I&N Dec. at 631 (BIA 1996) (emotional hardship from severance of family ties is common result of removal). In sum, while we are sympathetic to the hardship factors present in this matter, the respondent has not established that any potential hardship to his qualifying relatives rises to the level of exceptional and extremely unusual.

Alternatively, upon our de novo review, we will deny the respondent cancellation of removal in the exercise of discretion. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent's criminal history includes (arrests for (b) separate offenses between (b)((6) and(b)((6) (Exhs, 2, 3, 4), and he has a longstanding history of (b)((6) His most recent conviction was for driving while intoxicated in (b)((6) which occurred after he was placed in removal proceedings in 2010. He also was convicted of driving while intoxicated in (b)((6) and sentenced to (b)((6) and he was arrested for (b)((6) (Exhs 3, 4).

(b)((6)

The repetitive nature of his driving while intoxicated arrests and convictions, including one as recently as (b)((6) while he was in removal proceedings, reflects a continuing disregard for our nation's laws and evinces a disregard for the safety of people and property. Therefore, this is an extremely negative factor.

We recognize that the respondent has been in the United States for 20 years, that he supports (b)((6), and that he has a consistent employment history. Moreover, the Immigration Judge found that the respondent had been (b)((6), had participated in a (b)((6) (b)((6) (IJ at 13). We do not discount these findings, but also consider that the respondent's rehabilitation efforts only occurred after he was placed in removal proceedings, and that he has a long history of (b)((6) (Tr. at 31, 39). We note that the respondent was arrested (b)((6) (b)((6) although the charges were dismissed (IJ at 3). Notably, however, while the respondent claimed that he never (b)((6) he acknowledged that he (b)((6) and that (b)((6) called the police (Tr. at 31, 49).

Moreover, the respondent's immigration history involves more than his last entry without inspection, as at he previously entered the United States without inspection in 1993 before returning to Mexico (IJ at 3). The respondent reentered again without permission in 1997.[2] Considering the totality of circumstances, and acknowledging that considerable favorable factors are present, discretionary relief is not warranted in this case. *See Matter of Sotelo*, 23 I&N Dec. 201 (BIA 2001) (exercising discretion to deny cancellation of removal); *Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998).

Finally, the respondent bears the burden of demonstrating his good moral character. "The fact that any person is not within [the classes enumerated in section 101(f)] shall not preclude a finding that for other reasons such person is or was not of good moral character." Section 101(f) of the Act, 8 U.S.C. § 1101(f). *See Matter of Urpi-Sancho*, 13 I&N Dec. 641, 643 (BIA 1970). Upon consideration of the respondent's criminal history, including the 2012 driving while intoxicated conviction, along with his (b)((6) and negative immigration history, we conclude that he has not established the good moral character required for cancellation of removal. Accordingly, the following orders will be entered.

ORDER: The DHS appeal is sustained, and the Immigration Judge's October 5, 2016, decision is vacated insofar as he granted the respondent cancellation of removal.

FURTHER ORDER: The respondent is ordered removed from the United States to Mexico.

Ellen Rubowitz
FOR THE BOARD

[2] According to the Form I-213, the respondent departed in 1997 pursuant to a grant of voluntary return (Exh. 3). The respondent has not challenged this assertion, although he states that he left in 1997 to seek (b)((6) (Exh. 2, Tab B, p.2).