Matter of Erick Fernando MATA RODRIGUEZ, Respondent

Decided by Board September 15, 2026 [1]

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

The Immigration Judge erred in granting cancellation of removal for certain lawful permanent residents as a matter of discretion where the respondent's positive factors were outweighed by his lengthy and serious criminal history and his failure to offer any objective evidence of rehabilitation.

FOR THE RESPONDENT: Jessica Tome, Esquire, Miami, Florida

FOR THE DEPARTMENT OF HOMELAND SECURITY: Brian Roan, Assistant Chief Counsel

BEFORE: Board Panel: GORMAN, Deputy Chief Appellate Immigration Judge; VOLKERT, Appellate Immigration Judge; PICOS, Temporary Appellate Immigration Judge.

VOLKERT, Appellate Immigration Judge:

The Department of Homeland Security ("DHS") appeals the Immigration Judge's August 11, 2025, decision granting the respondent's application for cancellation of removal for certain permanent residents under section 240A(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(a) (2024). The respondent, a native and citizen of Mexico, opposes the appeal. The appeal will be sustained.

The Immigration Judge, balancing the factors present in the respondent's case, found that he merited a grant of cancellation of removal as a matter of discretion. The Immigration Judge found that the respondent's positive factors included the length of his residence in the United States, his family ties, and the fact that he arrived in the United States as a child. The

[1] Pursuant to Order No. 7269-2026, dated October 27, 2026, the Attorney General designated the Board's decision in *Matter of Mata Rodriguez* (BIA Sep. 15, 2026), as precedent in all proceedings involving the same issue or issues. *See* 8 C.F.R. § 1003.1(g)(3) (2026). Editorial changes have been made consistent with the designation of the case as a precedent.

Immigration Judge determined that while the respondent had a lengthy criminal history, he still merited a favorable exercise of discretion.

DHS argues that the Immigration Judge erred in determining that the respondent met his burden to show that he merits a favorable exercise of discretion on his application for cancellation of removal. *See* INA § 240(c)(4)(A)(ii), 8 U.S.C. § 1229a(c)(4)(A)(ii) (2024) (providing that an applicant for discretionary relief bears the burden to show that he or she merits a favorable exercise of discretion).

Upon de novo review, we agree with DHS and conclude that the Immigration Judge erred in granting the respondent cancellation of removal as a matter of discretion. *See* 8 C.F.R. § 1003.1(d)(3)(ii) (2026) (requiring the Board to engage in de novo review when reviewing issues of discretion); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 n.3 (BIA 2015) (explaining that the Board has the "authority to afford different weight to the evidence from that given by the Immigration Judge").

To determine whether the respondent merits a favorable exercise of discretion on his cancellation application, we "must balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented in his [or her] behalf to determine whether the granting of . . . relief appears in the best interest of this country." *Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998) (alteration in original) (citation omitted). "[F]avorable considerations include such factors as family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred at a young age), evidence of hardship to the respondent and his family if deportation occurs, service in this country's armed forces, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent's good character." *Id.* Adverse factors include "the nature and underlying circumstances of the grounds of exclusion or deportation (now removal) that are at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country." *Id.*

Like the Immigration Judge, we recognize that the respondent has demonstrated some positive factors, including his lengthy residence and family ties in this country, the fact that he arrived in the United States as a child, and that he is currently working with young boys at his boxing gym

and is attending church regularly. However, the respondent's negative factors include the following: the respondent has not presented any evidence that he has filed any federal tax returns or that he has registered for the Selective Service. He owns no property and has not presented any evidence of steady employment. Moreover, he has not submitted any letters from his acquaintances, friends, colleagues, or family members, attesting to his good moral character. Of most adverse significance, the respondent has an extensive criminal history in the United States which includes previous charges for burglary, possession of controlled substance, assault of a family member involving his mother, and harassing his sister, both of which resulted in his arrest. The record also includes evidence that the respondent has had numerous arrests and/or convictions for possession of controlled substances.

The record also contains evidence showing that the respondent has been arrested several other times, including for violating the terms of his probation, by failing to find work, failing to attend classes as he was instructed, and evading the arrest. Moreover, the respondent owes significant arrears in court-imposed fines. The respondent's extensive criminal history is a significant adverse factor. *Cf. Matter of Richards*, 29 I&N Dec. 658, 660 (BIA 2026) (finding that the respondent's lack of candor regarding his criminal history is a significant adverse factor when exercising discretion on an application for cancellation of removal). Although some of his arrests did not result in convictions, the underlying facts and circumstances of those incidents remain relevant to our discretionary analysis. *See Matter of Germain*, 29 I&N Dec. 648, 649–50 (BIA 2026) (finding that the respondent's criminal history, including his criminal charges that did not result in a conviction, outweighed the favorable factors relevant to the exercise of discretion for cancellation of removal); *see also Matter of Thomas*, 21 I&N Dec. 20, 23 (BIA 1995) ("In examining the presence of adverse factors on an application for discretionary relief, this Board has found it appropriate to consider evidence of unfavorable conduct, including criminal conduct which has not culminated in a final conviction for purposes of the [INA].").

We acknowledge the respondent's stated desire to better himself, but the record does not support the Immigration Judge's conclusion that he has adequately demonstrated rehabilitation. *See Matter of C-V-T-*, 22 I&N Dec. at 12. Notwithstanding his extensive criminal history, the respondent has offered no objective evidence of rehabilitation. *See Matter of Bain*, 29 I&N Dec. 72, 74–75 (BIA) (finding that the respondent did not establish he merited a favorable exercise of discretion where he had an extensive criminal history and did not present any evidence of rehabilitative efforts),

appeal dismissed, No. 25-10741, 2025 WL 2249871 (11th Cir. Aug. 7, 2025) (per curiam).

Having reviewed the record under the totality of the circumstances, we conclude that the respondent's positive equities do not outweigh his lengthy and serious criminal history. *See Matter of Mills*, 29 I&N Dec. 668, 669–70 (BIA 2026) (reversing the Immigration Judge's decision and finding that the respondent did not merit a favorable exercise of discretion because his criminal history outweighed the positive factors); *see also Matter of Silva-Trevino*, 26 I&N Dec. 826, 837 (BIA 2016) (noting that it is incumbent on a respondent to introduce favorable evidence to offset serious negative discretionary factors in the record). Therefore, we will sustain DHS' appeal and reverse the Immigration Judge's decision to grant the respondent's application for cancellation of removal. Further, we will deny the respondent's application for cancellation of removal as a matter of discretion. *See, e.g.*, *Linares-Rivas v. Bondi*, 139 F.4th 454, 457 (5th Cir. 2025) (holding that the court lacks jurisdiction to review the agency's discretionary decision to deny cancellation of removal).

ORDER: DHS' appeal is sustained, and the Immigration Judge's August 11, 2025, decision, granting the respondent's application for cancellation of removal for certain permanent residents is vacated, and the respondent's application for cancellation of removal is denied.

FURTHER ORDER: The respondent is ordered removed to Mexico.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to $998 for each day the respondent is in violation. *See* INA § 274D, 8 U.S.C. § 1324d (2024); 8 C.F.R. § 280.53(b)(14) (2026). Further, any respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than 2 years, or both. *See* INA § 276(a), 8 U.S.C. § 1326(a) (2024).