



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name:



Date of this notice: 2/23/2009

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:

Malphrus, Garry D.
MILLER, NEIL P.
Mullane, Hugh G.

Falls Church, Virginia 22041

File: [REDACTED] - Chicago, IL

Date: FEB 23 2009

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Luis M. Sanabria, Esquire

ON BEHALF OF DHS: Amy E. Greene
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The respondent has appealed the Immigration Judge's January 24, 2007, decision denying his application for cancellation of removal pursuant to section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), for lack of a showing that his removal would result in the requisite degree of hardship to his qualifying relative.

The respondent has the burden to establish that his removal would result in "exceptional and extremely unusual hardship" to a qualifying relative. *See* section 240A(b) of the Act; *see also Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002). Hardship factors related to the applicant "can only be considered insofar as they may affect the hardship to the qualifying relative." *Matter of Monreal*, 23 I&N Dec. 56, 63 (BIA 2001); *see also Matter of Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The respondent's primary argument, below and on appeal, is that the qualifying relative, his United States citizen daughter, would suffer extreme and exceptionally unusual hardship if he returned to Honduras because he would die soon upon his return there due to a lack of medical care and other support in his home country. *See* Respondent's Brief, I.J. at 6. However, the respondent has submitted almost no evidence to support this claim. There is no evidence in the record regarding the availability of kidney dialysis treatment in Honduras or other medical treatment the respondent may need. In discussing his medical condition, the respondent on appeal relies on a Wikipedia article he had placed in the record, but such articles are not a reliable source for evidence in immigration proceedings. Additionally, the respondent has seven brothers in Honduras, which the respondent testified could not assist him. However, there are no affidavits or other evidence in the record "about the willingness and the ability of his family members in Honduras to assist him." (I.J. at 6).

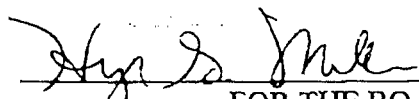
Moreover, the record is not clear about whether the respondent's wife, who has Temporary Protected Status, would return to Honduras with the Respondent and assist him there, or whether she and the daughter would remain in the United States. (I.J. at 3). The wife did not even testify below. Also, the record is not clear regarding the respondent's assets in the United States and whether such

assets reasonably could be liquidated to assist the respondent and his family if the family returned with him to Honduras. (I.J. at 6; Tr. at 36).

Given the humanitarian issues involved in this case, we will remand the record to give the respondent an additional opportunity to establish his claim, and to allow both parties to present additional relevant evidence for the Immigration Judge's consideration.

ORDER: The Immigration Judge's decision is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with this decision and for entry of a new decision.



FOR THE BOARD

Falls Church, Virginia 22041

File: [REDACTED]

Date: FEB 23 2009

In re: [REDACTED]

DISSENTING OPINION: Neil P. Miller, Board Member

I respectfully dissent. In my view, when the hardships presented by this case are considered in the aggregate the record supports a finding that the respondent's removal to Honduras would result in exceptional and extremely unusual hardship to his 14-1/2-year-old United States citizen ("USC") daughter [REDACTED], who is his only qualifying relative. I recognize that only hardship to [REDACTED], not to the respondent himself, may be considered for purposes of section 240A(b) relief. However, this Board has held that hardships relating only to the alien may nevertheless be considered to the extent they affect the potential level of hardship to his qualifying relatives. See *Matter of Recinas*, 23 I&N Dec. 467, 471 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56, 63 (BIA 2001).

[REDACTED] father is 60 years old and has several serious medical conditions. He is diabetic and insulin dependent. He suffers from coronary artery disease, congestive heart failure, and hypertension. In addition, he now has end-stage renal disease, which is progressive in nature and necessitates his receiving dialysis three times a week, 4 hours a session, just to stay alive. His kidney disease is irreversible and requires ongoing, close, and frequent monitoring by health care personnel. His health care needs are being attended to here in the United States, but he faces an uncertain future upon returning to Honduras, which is "one of the poorest countries in the Western Hemisphere . . . with massive unemployment." See Group Exh. 3, Tab G (World Fact Book).

The respondent's poor health and personal circumstances strongly affect the hardships confronting [REDACTED], whether or not she accompanies him to Honduras. If her father is forced to return to Honduras, there is legitimate concern whether he will be able to secure the necessary health care services to keep him alive, and whether he will be able to afford such services if they do exist, thus compounding [REDACTED]'s natural concerns about her father. Given the respondent's state of health, he would be unable to work and to financially support her from afar, even assuming he could find work in the face of the "massive unemployment" in his homeland. It may be the case that the family home in the United States (virtually the only family financial asset) will have to be sold in order to pay for his medical care and living expenses in Honduras. Even assuming a quick sale of the house (which is by no means currently guaranteed), this money may not last very long given the respondent's documented history of frequently-arising medical and hospitalization needs. Selling the house would also result in [REDACTED] being displaced from the home in which she has lived virtually her entire life. There also is no guarantee that [REDACTED] would be able to visit her father in Honduras as his health declines given the family's limited financial resources. Also of critical concern is that in the event the respondent no longer is receiving the requisite care for his life-threatening, chronic medical conditions in Honduras, he may very well die thereby leaving Febe to grow up without her father. The respondent's removal may result in [REDACTED] never seeing her father again.

[REDACTED]

If [REDACTED] does accompany her father to Honduras, she faces many hardships. As noted above, Honduras is one of the poorest countries in the Hemisphere. For the past 10 years, our Government has designated Honduras under the Temporary Protected Status ("TPS") program based on the substantial disruption of living conditions in that country stemming from Hurricane Mitch. [REDACTED] father is in declining health and is unable to work. The realistic employment opportunities in Honduras for her mother, who is 53 years old and has been granted TPS, may be limited in light of reported economic and country conditions. Whatever assets the family may be able to muster will necessarily be spent on fighting to keep the respondent alive, leaving little if any resources to support [REDACTED] and to provide for her educational, health care, and future needs. Further, as a 14-1/2-year-old teenager, [REDACTED] is now old enough to experience much greater difficulties in adjusting to a new country, much less to a country which is not only poor, but which the United States formally recognizes as having had a substantial disruption in living conditions for a significant period of time. [REDACTED] Spanish-speaking and comprehension skills are also limited. It is not unreasonable to expect that her educational opportunities will be diminished, and that her removal from school, and separation from teachers and family members at this stage of her development will likely prove more difficult.

When all of these factors are considered cumulatively, the hardship in this case goes beyond that which is normally experienced in most cases of removal, and is sufficient to be considered exceptional and extremely unusual. In addition, I find that the respondent has otherwise demonstrated eligibility for cancellation of removal as a matter of law and discretion. Accordingly, I would sustain the appeal and remand the record for the conduct of the necessary background and security checks.



Neil P. Miller
Board Member