



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Gilbert, Michael
3900 Veterans Memorial Hwy.
Suite 120
Bohemia, NY 11716-0000

Office of the District Counsel/NYC
26 Federal Plaza, Room 1130
New York, NY 10278

Name:
Riders:

A' -----

Date of this notice: 02/08/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Frank Krider
Chief Clerk

Enclosure

Panel Members:

COLE, PATRICIA A.
FILPPU, LAURI S.
OSUNA, JUAN P.

02/08/06

Falls Church, Virginia 22041

Files: A - New York
A

Date:

FEB 08 2006

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Michael Gilbert, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document (both respondents)

APPLICATION: Cancellation of removal; voluntary departure

The respondents appeal from the August 27, 2004, decision of the Immigration Judge, which denied their applications for cancellation of removal pursuant to section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), but granted them voluntary departure under section 240B of the Act, 8 U.S.C. § 1229c. The appeal will be sustained and the record will be remanded for the required background and security checks.

On appeal the respondents, a married couple, both natives and citizens of Guatemala, challenge the Immigration Judge's finding that they failed to establish that their removal would result in exceptional and extremely unusual hardship to their 7-year-old United States citizen child. Their young child would have to accompany his parents to Guatemala as there are no family members who are lawfully present who could care for their child in this country.

We find that the record establishes that the respondents' young son would suffer "exceptional and extremely unusual" hardship in the event of his parents' removal to Guatemala. *See Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002). *But cf. Matter of Monreal*, 23 I&N Dec. 56, 61 (BIA 2001) (an alien must establish that his or her qualifying relative would suffer hardship that is substantially beyond that which would ordinarily be expected to result from the alien's deportation, but need not show that such hardship would be "unconscionable.") The respondents provided evidence of their son's exceptional health needs. As an infant the respondents' son was hospitalized with pneumonia, and he has had repeated hospitalizations, once for a life-threatening asthmatic episode. *See Tr.* at 62 (a child who has been hospitalized for asthma has demonstrated a life-threatening event); *see also Exh. 2-6* (medical records of the child). The respondents presented the testimony of a medical expert witness, Dr. Horn, who predicted a likely life-time asthma problem for the child based on the early onset of the ailment and its relatively severe course so far. *Tr.* at 65. As the child has risk factors for

continuing asthma, and as a known asthma sufferer on multiple medications, if the child does not have access to adequate medical care, he could suffer growth abnormalities, permanently decreased pulmonary function, and even die. Tr. at 68-69. Further, a letter from the treating physician states that the child suffers from asthma, rhinosinusitis, and atopic dermatitis and that his "medical regimen is complicated" and that he can "benefit greatly from access to the best medications on the market." Exh. 4-1 (attached to the letter is a list of the seven medicines prescribed to the respondents' child). The United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices* ("Country Reports") show that in 2002 and 2003 the Government of Guatemala did not devote sufficient resources to ensure adequate health services for children. Exhs. 3, 6. The 2003 report also states that 1.3 million women and children did not have access to basic health services during the year, and that persons with physical disabilities suffered discrimination in education and limited access to health care. Exh. 6.

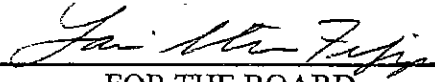
We recognize that the respondents have family members residing in Guatemala who may be able to assist them upon their return. The respondents do not have significant assets in this country. They have some money in the bank and they both have stable employment. Arguably, the respondents may be able to afford the medicines which their child presently takes for a period of time in Guatemala. However, we do not find that these factors ultimately diminish the extremely unusual hardship their United States citizen child would suffer in Guatemala without the monitoring, specialized medicines, and access to health care he receives here. For example, the respondents' child traveled to Guatemala with his mother in 2001 to visit relatives. While there he suffered a severe allergic reaction and infection due to mosquito bites which, despite treatment by a physician in Guatemala, worsened and resulted in his hospitalization for approximately two days upon return to the United States. See Exh. 2-6; Tr. at 37.¹ This episode occurred due to the child's allergies, and did not involve an asthma attack. The expert witness testified that without adequate medical care when experiencing an exacerbated asthma attack the respondents' child could die. The *Country Reports* establish that the government of Guatemala does not provide even basic health services, much less specialized health care, to a vast number of children, and the respondents parents have not shown that they have the financial means that would enable them to continue to seek such specialized care, even if available abroad. There are other factors, such as the child's inability to communicate in Spanish, and the difficulty the parents may have in seeking employment, which we have also considered. We conclude that cumulatively the evidence establishes the heightened hardship to the United States citizen child necessary for eligibility for cancellation of removal under section 240A(b)(1)(D) of the Act.² There is no dispute that the respondents have satisfied the other eligibility requirements, continuous presence and good moral character, necessary for cancellation of removal. As the respondents appear eligible for cancellation of removal, we will sustain the appeal and remand the record for the required background and security checks.

¹ We note that the transcript reflects weeks, rather than days; however, the Immigration Judge found that it was 2 days, which is supported by the medical record.

² As noted by the respondents on appeal, the transcript reflects several "indiscernible" notations with respect to the testimony of the respondents, and to the male respondent in particular. As the Immigration Judge found that the respondents testified credibly, and that the male respondent gave similar testimony to his wife, we do not find this defect to materially affect our ability to review the record on appeal.

ORDER: The appeal is sustained.

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). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).



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