U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: CABRERA GOMEZ, BENJAMIN **A75-710-964**
Riders: 75-710-965

Date of this notice: 06/18/2004

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

Sincerely,

F. F. Krider

Frank Krider
Acting Chief Clerk

Enclosure

Panel Members:
COLE, PATRICIA A.
FILPPU, LAURI S.
HESS, FRED

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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: A75 710 964 - Los Angeles
A75 710 965

Date: JUN 18 2004

In re: BENJAMIN CABRERA-GOMEZ
LONDY PATRICIA HIDALGO-MAZARIEGOS

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Carl Shusterman, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 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 (A75 710 964 only)

212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled (A75 710 965 only)

APPLICATION: Reconsideration

ORDER:

PER CURIAM. This case was last before the Board on September 22, 2003, when we sustained the Department of Homeland Security's ("DHS," formerly the Immigration and Naturalization Service) appeal of the Immigration Judge's March 29, 2002, decision granting the respondents' applications for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The respondents have now filed a motion to reconsider. The motion is denied.

In our September 22, 2003, decision sustaining the DHS's appeal, we found that the Immigration Judge erred in concluding that the respondents had satisfied their burden in demonstrating that their eldest United States citizen daughter would suffer exceptional and extremely unusual hardship on the basis of her academic accomplishments and future academic potential (I.J. Dec. at 14-15). In particular, we pointed out that the Board has held that the fact that educational opportunities for a child are better in the United States than in an alien's homeland does not satisfy the exceptional and extremely unusual hardship standard applicable to cancellation of removal. *See Matter of Andazola*,

23 I&N Dec. 319 (BIA 2002) (finding that unmarried mother did not establish requisite hardship to her United States citizen children notwithstanding the fact that it would be unlikely that the children would receive an education in her home country equal to that in the United States).

In their motion, the respondents assert that the Board erred in failing to consider all of their factors in the aggregate, including their other United States citizen child. A review of the Immigration Judge's decision in this case reveals that, while the Immigration Judge discussed other factors in his decision, he ultimately decided that the respondents had sustained their burden of proof in demonstrating the necessary hardship solely on the basis of the potential "damage" to the "present and future educational prospects" that their eldest United States citizen daughter may endure if removed from the United States (I.J. Dec. at 13-14). As noted by the respondents, neither the Board nor the Immigration Judge addressed the respondents' hardship factors "cumulatively." *See Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002) (noting that a "cumulative" analysis of hardship factors is often required).

In this regard, the respondents note other hardship factors including other relatives in the United States, emotional difficulties that removal may cause to their United States citizen children, and the lack of familiarity their United States citizen children have with their parent's respective native countries. Perhaps most notable is that the male respondent will be ordered removed to Mexico while the female respondent will be ordered removed to Guatemala. However, the respondents have failed to establish that they will be required to remain separated because they have failed to provide evidence that both Mexico and Guatemala refuse to permit immigration of foreign born spouses. Therefore, even considering the respondents' hardship factors in the aggregate, they have failed to establish their burden of proof for the relief sought and have failed to establish that the Board erred in sustaining the DHS's appeal of the Immigration Judge's decision granting their applications for cancellation of removal. *See* 8 C.F.R. § 1003.2 (2004).

Accordingly, the motion is denied.

FOR THE BOARD