UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Los Angeles, California

File No.: A 75 710 964/965 March 29, 2002

In the Matter of	)	
	)	
BENJAMIN CABRERA-GOMEZ	)	IN REMOVAL PROCEEDINGS
LONDY PATRICIA HIDALGO MAZARIEGOS	)	
	)	
Respondents	)	

CHARGE: Section 237(a)(1)(A) of the Immigration and Nationality Act, as amended.

APPLICATIONS: Cancellation of Removal - Section 240A(b)(1) of the Immigration and Nationality Act, as amended.

Voluntary Departure - Section 240B of the Immigration and Nationality Act, as amended.

ON BEHALF OF RESPONDENTS:

Leif Keles, Esquire
6240 S. Grand Avenue
Suite 1608
Los Angeles, California 90017

ON BEHALF OF SERVICE:

Anh Nguyen, Esquire
Assistant District Counsel
Los Angeles, California

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondents in the instant proceedings are a married couple. The female respondent is a native and citizen of Guatemala. The male respondent is a native and citizen of Mexico. The respondents have admitted to the allegations of fact and conceded to the charges set forth against them in their Notices to Appear. The respondents have voluntarily come and knowingly come and have intelligently withdrawn their previously submitted applications for asylum, withholding of removal, and

relief under the Convention against Torture. Both respondents have requested cancellation of removal under Section 240A(b)(1) of the Immigration and Nationality, as amended. And the alternative remedy of voluntary departure under Section 240B of the same statute. Each respondent has designated a country of her/his nativity and citizenship for removal purposes.

For the reasons set forth below, the Court has ruled that in each case, there exists clear, unequivocal, and convincing evidence to support the removability of respondent as alleged and charged in that alien's Notice to Appear. However, for reasons also set forth below, the Court has concluded that each respondent has established eligibility for cancellation of removal under Section 240A(b)(1). Accordingly, in each case, the Court rules that the respondent should be granted cancellation of removal and with it, permanent residence in the United States, subject to CAP availability. The remaining relief applications made under the voluntary departure statute are deemed moot.

For reaching its decision in the instant proceedings, the Court has carefully considered the testimony of both respondents, of their 10-year-old United States citizen daughter, Diana, and of Ms. Anna Louise Chavez, the principal of the elementary school in the Los Angeles area, which the two daughters of respondents currently attend.

Also, before reaching its decision in the instant proceedings, the Court has carefully considered the following

documentary evidence in the files of the respondents: Exhibits 1, the Notices to Appear; Exhibits 2, the cancellation applications of the respondents and the documents offered in initial support thereof; and Exhibits 3, the additional and supplemental materials offered by the respondents in support of their relief claims, including educational records relative to their two United States citizen children, and other documents related to their lives in the United States, their presence in the United States, and their other family connections in the United States.

At their hearing on February 9, 2001, the respondents pleaded to the allegations and to the charge set forth against each of them in their Notices to Appear. The lead respondent admitted to allegations 1 and 2 and to the charge set forth against him in his Notice to Appear; that he is not a citizen or national of the United States; that he is a native and citizen of Mexico; and that he is removable from the United States pursuant to Section 237(a)(1)(A) of the Immigration and Nationality Act, as amended. It should be noted for the record that the male respondent has also denied allegations 3 and 4 in the Notice to Appear, to wit: that he was admitted to the United States at an unknown port of entry on or about May 26, 1989; and that he did not then possess or present a valid immigrant visa, re-entry permit, border crossing identification card, or valid entry document required under the Immigration and Nationality Act. However, it should be repeated and stressed that respondent has

conceded his removability, and that relief is his only request with regard to removal.

At the same hearing, on February 9, 2001, the female respondent admitted to the allegations of fact and conceded to the charge set forth against her in her Notice to Appear, to wit: that she is not a citizen or national of the United States; that she is a native and a citizen of Guatemala; that she entered the United States at or near San Ysidro, California on or about November 1, 1988; that she was not then admitted or paroled after inspection by a United States Immigration Officer; and that she is subject to removal pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended.

The female respondent has testified in the instant case that she is an English-speaking, 33-year-old adult in good health, who has been married to the male respondent in the United States since May 26, 1990. She has no criminal record and has effectuated only one departure from the United States since her initial arrival on November 1988. That departure was a one-month visit to Guatemala in December 1995 to see her sick mother there.

There are no prior orders of removal or deportation against the female respondent.

The female respondent and her husband are the parents of two United States citizen children: Diana, age 10 years, a fourth-grader; and Jocelyn, age 8 years, a second-grader.

The female respondent and her immediate family reside

together in a home they own at Bell Gardens, California.

The female respondent is employed on a part-time basis at the Bandini Elementary School in the Montebello District in southern California. She is employed as a teacher's aide in the area of special education.

The female respondent also attends GED courses in an effort to obtain a high school diploma in the United States.

Currently, neither the female respondent nor any member of her immediate family receive any welfare payments. Her two children are eligible for Medi-Cal.

The mother of the female respondent is a 59-year-old permanent resident of the United States, who also resides in southern California. The female respondent is also possessed of two brothers who are United States citizens and also reside in southern California. The father of the female respondent and two of her siblings reside in Guatemala.

The daughters of the female respondent have visited Guatemala only once and only briefly, in December 1995.

The female respondent's elder daughter, Diana, is "doing great at school" and has been admitted to a math and science honors summer program overseen by Johns Hopkins University. The summer scholarship program directed by Johns Hopkins will cover the next four summers.

Both the female respondent and the extensive documentation in Exhibit 3 of the record proceedings indicate that the United

States citizen daughter, Diana, is a gifted and talented student with extraordinary abilities in a number of areas, including particularly math and science.

The female respondent's other daughter, Jocelyn, is also a well-above-average student in elementary school, who has consistently performed well in her academic endeavors. Currently, and unfortunately, Jocelyn is suffering certain bladder control problems which have their origin from stress arising out of the instant litigation for her parents. As a result of the stress-induced emotional problems of Jocelyn, her school has recommended and helped arrange for psychological counseling for her and her immediate family. This information comes from both the testimony of the respondent's and the documentary evidence set forth in Exhibits 3, as well as the additional statements under oath of the principal of the school where both Jocelyn and Diana attend.

The female respondent has stressed that while she is a native and citizen of Guatemala her husband is a native and citizen of Mexico, thus, the respondent's face removal but not together to the same nation.

The male respondent has also testified in the instant case. He is an English-speaking, 33-year-old male in good health with no criminal record, who first came to the United States in April 1984, and who briefly visited Mexico for a month period beginning in April 1989 in order to attend to his parents there. He

returned to the United States in May 1989 and has effectuated no other departure from this country. He has never been subject to an Order of Removal or deportation from the United States prior to the instant proceeding.

The male respondent has largely confirmed the information provided by the documentary evidence of record and by his wife as a witness.

The male respondent is employed as a headwaiter at a Japanese restaurant in Downey, California. He and his immediate family receive no welfare at the current time. The male respondent is a taxpayer, who has admitted to certain discrepancies and inaccurate information on his prior tax returns, executed with the United States Government. Based on the evidence of record, there are no outstanding indictments or warrants against the male respondent because of the errors on his tax return. The male respondent has represented, without contradiction in the record that the errors executed by him on his tax returns were misstatements made without a willful desire to discord the U.S. Government.

The male respondent has studied English in the United States, as demonstrated by his fluency in the language in the instant case.

The male respondent is possessed of a lawful permanent resident mother, age 59, who resides in southern California, often with the male respondent. This individual suffers from a

serious diabetic condition which has resulted in surgery and the amputation of several of the toes from one of her feet. The mother of the male respondent requires medical attention and other support which the male respondent participates in giving her on a regular basis.

The male respondent is also possessed of one United States sibling in the United States and one lawful permanent resident sibling in the United States, both of whom reside in southern California.

The elder daughter of the respondent's, Diana Caroline Cabrera Hidalgo, has also testified in the instant case in the English language. Diana is a 10-year-old, native born citizen of the United States, who resides with her immediate family and attends the fourth-grade in the Montebello School District at the Bandini Elementary School. She has particular favor for her courses in math, science, and history. She also feels "so good" and "very special" to be in the Johns Hopkins-sponsored special summer honors program. Her exceptional academic record is evidenced by her own testimony, the remarks under oath of her parents, and the extensive documentation contained in Exhibits 3.

Finally, Diana's school principal, Anna Louise Chavez, has also testified in the instant case. Ms. Chavez is a 57-year-old United States citizen and the principal of the Bandini Elementary School in the Montebello School District in southern California, a post she has held for the past seven years.

Ms. Chavez has known the respondents for the past five years and is very familiar with both of the United States citizen daughters of the respondents. Both of those daughters attend the Bandini Elementary School where, according to Ms. Chavez, they are doing "very, very well."

Ms. Chavez finds Diana a "gifted and talented" student, who is a member of the gifted and talented academic cluster for the fourth grade at the Bandini Elementary School. Diana has scored in the 99th percentile in standardized tests and has become eligible for the Johns Hopkins University-sponsored program in math and science, beginning in the summer, and running for the next four years.

Ms. Chavez has stated that based on her own knowledge, and on her observations of Diana, plus her conversations with Diana's teachers, she has concluded that this young woman has been a "wonderful student" in Bandini for several years. Indeed, Ms. Chavez has confirmed that Diana has received the Principal's award at the school every year she has been there. In sum, Ms. Chavez has described Diana as a "exceptional" student.

Likewise, Ms. Chavez has described the other United States citizen daughter of the respondents, named Jocelyn, as a "gifted" student. She has stated that Jocelyn has also suffered recent "accidents" due to the stress of her parents' litigation. However, Jocelyn continues to perform at a high academic level. Because of the emotional problems which Jocelyn has which have

been induced by the stress of her family's immigration litigation, Ms. Chavez and the school have recommended counseling from a local service organization which works with the Bandini Elementary School.

Ms. Chavez has stated that the respondents themselves "have probably been the most outstanding parents since I have been there" at Bandini Elementary School. She states that both respondents have been very active in school affairs, very active in the education of their children, and very active in representing the Bandini Elementary School at the district level in southern California.

Moreover, Ms. Chavez has stated that the intervention of both respondents in the lives generally and the education specifically of their daughters have "helped tremendously the performance" of those children here in southern California.

Finally, Ms. Chavez has stated that, "I do not think that I could begin to imagine" the negative impact the removal of the respondents themselves would have on the future nd specifically the educational future of their children.

The evidentiary record in these cases is fully supportive of the testimony representations made and cited, supra. Specifically, the educational record reinforces the educational achievements of the two United States citizen children of the respondents, the honors programs which await Diana here in the United States, and the other family relationships in the United

States of which the respondents are apart.

In order to qualify for cancellation of removal under Section 240A(b)(1) of the Immigration and Nationality Act, an alien must establish the following: (1) continuous physical presence in the United States for a continuous period of not less than ten years immediately preceding the date of the application for relief; (2) good moral character during the same period; (3) the lack of any disqualifying criminal offenses set forth under Section 240A(b)(1)(C) of the Immigration and Nationality Act, as amended; (4) the fact that the removal of the alien in question "would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." Monreal, 23 I&N Dec. 56 (BIA 2001), slip op. at 57.

This Court has concluded that both respondents have demonstrated the necessary continuous, physical presence in the United States to establish their cancellation eligibility. Each respondent has testified to an unbroken period of physical presence which is consistent with their eligibility for cancellation, save for brief, and non-meaningful interruptions in such presence as described by them. The Government has not offered no rebuttal evidence to contradict the representations made by the respondents regarding their continuous physical presence in the United States.

Likewise, both respondents have established to this Court's

satisfaction that they have been possessed of the necessary good moral character of cancellation eligibility. Neither respondent has a criminal record, neither respondent has ever been subject to a prior order of deportation or removal from the United States, and neither respondent has any other history of criminal or civil malfeasance in the United States. Both respondents are hard-working individuals who have devoted themselves in an extraordinary unusual fashion to the education and success of their children in this country. Although the male respondent has admitted to certain discrepancies which he has executed on past income tax returns in the United States, he has also provided convincing evidence that these mistakes were just that and did not constitute willful misrepresentations undertaken for the specific purpose of violating Federal law. In the aggregate, the Court finds that both respondents have demonstrated more than enough of the moral character required of them by the cancellation statute.

Likewise, the Court is satisfied that both respondents lack any disqualifying criminal offenses which would deprive him of cancellation eligibility under Section 240A(b)(1)(C) of the Immigration and Nationality Act, as amended.

Finally, the Court has concluded that each respondent has demonstrated that her/his removal from the United States would cause exceptional and extremely unusual hardship to their United States citizen daughter, Diana. The record is overwhelming and

consistent that Diana is an extremely gifted and talented student who has become eligible for outstanding and extremely critical honors programs to be administered by a major American university here in southern California over the next four summers. Diana is a rare student, both with regard to her intellectual gifts and her motivation. Her academic achievement, and her future academic performance, are an example to children of her age and indeed, of any age in schools in the United States. The evidentiary record, both documentary and testimonial, indicate that the performance of Diana, and her educational future are due largely if not exclusively to the support, encouragement, and overwhelming intervention of her parents in her education.

The documentary evidence of record, the testimony of Diana's principal, the information on country conditions contained in Exhibits 3, and the representations of Diana herself, clearly reveal that Diana's removal from the United States, or her separation from her parents in the United States, would cause severe damage to her present and future educational prospects, and to the support system which has enabled her to excel in a truly exceptional fashion as a young woman engaged in schooling in the United States.

In Matter of Monreal, supra, slip op. at 63, the United States Board of Immigration appeals has stated that a cancellation applicant who has "a qualifying child with ... compelling special needs in school" would be the kind of alien

eligible for categorization as an individual whose removal would cause exceptional and extremely unusual hardship to such a United States citizen child.

This Court finds that in making such a statement, the Board of Immigration Appeals has in no way, shape, or form, limited the phrase "compelling special needs in school" to a United States citizen child who is disabled or intellectually challenged. Such a phrase just as reasonably should cover a child with profound academic gifts which must be attended to as lovingly and carefully as a disabled or handicapped child.

In short, the Court finds that the extraordinary academic achievements and future of Diana and the unique role played in those achievements and that future by her parents, would be savagely and permanently interrupted and abridged by the removal of those parents from the United States.

Accordingly, the Court finds in a manner consistent with recent case law, that the removal of the parents (respondents) of Diana in this case would cause irreparable damage to her educational future. Diana's principal has described her educational record and future as "exceptional." Likewise, this Court finds that the ruination of that educational record by the removal of her parents from the United States would cause Diana irreparable, exceptional harm and injury.

Accordingly, the Court finds that both respondents have satisfied the hardship requirement for cancellation eligibility.

Since the respondents have satisfied all prongs of eligibility for cancellation of removal, they are granted relief under Section 240A(b)(1) of the Immigration and Nationality Act, as amended, subject to only CAP availability.

Inasmuch as the respondents have been granted cancellation relief, their request for voluntary departure I deem moot.

BRUCE J. EINHORN
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE BRUCE J. EINHORN, in the matter of:

BENJAMIN CABRERA-GOMEZ

A 75 710 964

Los Angeles, California

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Julie W. Holloman

Julie W. Holloman, Transcriber

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July 22, 2002
(completion date)

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Riders: 75-710-965

Date of this notice: 09/22/2003

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

Jeffrey Fratter
Chief Clerk

Enclosure

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

Files: A75 710 964 - Los Angeles
A75 710 965

Date:

SEP 22 2003

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Elif Keles, Esquire

ON BEHALF OF DHS: An Mai Nguyen
Assistant District Counsel

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)

Sec. 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: Cancellation of removal

The Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) has appealed the March 29, 2002, decision of the Immigration Judge granting the respondents' applications for cancellation of removal pursuant to section 240A(b) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1229b. Removability is not an issue. The only issue on appeal is whether the Immigration Judge correctly found that the respondents had demonstrated that their removal from the United States would cause exceptional and extremely unusual hardship to their United States citizen daughter, Diana. The appeal will be sustained.

Section 240A(b) of the Act provides that the Attorney General may cancel the removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien establishes, *inter alia*, that removal would result in

exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Section 240A(b)(1)(D) of the Act. The Immigration Judge found that the evidence on record demonstrated that the respondents' daughter Diana is an extremely gifted and talented student and that her achievements have been largely due to the active support of the respondents (I.J. at 12-13). The Immigration Judge concluded that, in view of their daughter's academic accomplishments and future potential, the removal of the respondents would result in exceptional and extremely unusual hardship to her (I.J. at 14-15). We disagree.

We have 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 extreme hardship standard relevant to suspension of deportation let alone the higher exceptional and extremely unusual hardship standard applicable to cancellation of removal. *See Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Kim*, 15 I&N Dec. 88 (BIA 1974). In *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002), a cancellation of removal case that was decided after the Immigration Judge rendered his decision in this case, we held that an unmarried mother did not establish the requisite hardship to her United States citizen children notwithstanding, *inter alia*, the fact that it would be unlikely that the children would receive an education in her home country equal to that they might receive in the United States. We further noted in a footnote that to equate diminished educational opportunities with exceptional and extremely unusual hardship would result in the grant of cancellation of removal to virtually all cases involving respondents from developing countries with qualifying small children. *Id.* at 323, note 1. Such was not the intent of Congress. *Id.*

Thus, while we recognize that the respondents' children will suffer some hardship resulting from their parents' removal, we find that it does not rise to the level of exceptional and extremely unusual hardship that is required for a grant of cancellation of removal. Finally, we will grant the respondents voluntary departure. Accordingly, we will enter the following orders.

ORDER: The DHS' appeal is sustained and the Immigration Judge's decision granting the respondents' applications for cancellation of removal is vacated.

FURTHER ORDER: In lieu of removal, and conditioned upon compliance with the provisions of the statute, the respondents are permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order, or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c) and (f). In the event that the respondents fail to depart or comply with the conditions set forth below, the respondents are ordered removed to Mexico (A75 710 964) and Guatemala (A75 710 965).

FURTHER ORDER: The respondent must post a voluntary departure bond in the amount of $500 with the district director within 10 business days of the date of this order. If the bond is not posted within 10 business days, the order of voluntary departure is automatically vacated on the following business day, and the respondent is ordered removed to Mexico (A75 710 964) and Guatemala (A75 710 965).

FURTHER ORDER: The respondent must provide to the DHS appropriate travel documentation, sufficient to assure lawful entry into the country to which the respondent is departing, within 30 days of this order or within any extension beyond that time as may be granted by the district director.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the district director, the respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

FOR THE BOARD