[ATTORNEY NAME]
[ADDRESS]
[PHONE]
[EOIR ID#]
Counsel for Respondent

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	
Xxxxx Xxxx-Xxxx	**File No.: Axxx xxx xxx**
In removal proceedings	

BRIEF IN SUPPORT OF RESPONDENT'S APPEAL

Respondent Xxxx Xxxx-Xxxx appeals the Immigration Judge's [DATE] decision denying his application for cancellation of removal for non-permanent residents.

STATEMENT OF FACTS

[INSERT 1-2 PAGE SUMMARY OF THE RELEVANT FACTS ESTABLISHING CONTINUOUS PHYSICAL PRESENCE, GOOD MORAL CHARACTER AND EXCEPTIONAL AND EXTREMELY UNUSUAL HARDSHIP TO THE QUALIFYING RELATIVE].

PROCEDURAL HISTORY

On February 26, 2020, DHS filed a Notice to Appear charging that the Respondent is subject to removal under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is present in the United States without being admitted or paroled. In removal proceedings, Respondent conceded

removability and applied for cancellation of removal. The Immigration Judge determined that Respondent was credible but denied the Respondent's application, concluding that he did not establish the "continuous presence" or "exceptional and extremely unusual hardship" eligibility requirements. IJ at 6-7. The Immigration Judge also found that Respondent did not merit a favorable exercise of discretion. IJ at 9. Respondent timely appealed to the Board.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. In holding that Respondent did not show a continuous presence in the United States for the last 10 years, did the Immigration Judge err by (a) requiring Respondent to corroborate his credible and unchallenged testimony and (b) ignoring its obligation to provide "notice and opportunity" to corroborate, as required under Third Circuit law?

2. In holding that Respondent failed to show exceptional and extremely unusual hardship, did the Immigration Judge properly disregard (a) the evidence that Respondent's U.S. citizen children will relocate to the Dominican Republic and (b) expert evidence that Yyyy is suffering from Post Traumatic Stress Disorder?

3. Did the Immigration Judge err in holding that Respondent does not warrant cancellation of removal as an exercise of discretion where Immigration Judge's analysis considered only negative findings and ignored the positive?

4.

STANDARD OF REVIEW

The Board reviews the findings of fact, including the determination of credibility, made by the Immigration Judge under the clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews all other issues, including issues of law, discretion, and judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

SUMMARY OF ARGUMENT

Respondent has satisfied his burden of to establish his eligibility for cancellation of removal under INA § 240A(b)(1) and that he warrants an exercise of discretion under INA § 240(c)(4)(A). With respect to the "continuous physical presence" requirement, Respondent's testimony that he entered the United States in April 2007 and has remained here since was credible, unchallenged, and is supported by substantial evidence. The Immigration Judge had no basis for determining that corroboration was necessary and, in any event, failed to provide "notice and opportunity" to corroborate, as required under well-established Third Circuit law.

Next, Respondent showed that his removal to Guatemala would result in an "exceptional and extremely unusual hardship" to his U.S. citizen children, particularly to his daughter Yyyy, who suffers from a clinically diagnosed language disorder and PTSD and requires treatment and services not available in Guatemala (or in the Dominican Republic, where the family is likely to relocate given the impossible financial burden to remain in the United States without Respondent or other family support). However, in reaching the opposite result, the Immigration Judge analyzed the requisite hardship as if the children would remain in the United States without addressing the fact that the children are more likely to move to the Dominican Republic. In addition, the Immigration Judge's finding regarding Yyyy's current psychological state is contradicted by Dr. JL, the psychologist who evaluated Yyyy and who is undisputedly qualified to render expert psychological opinions, including on PTSD.

Respondent has also showed the relief is warranted in the exercise of discretion. The Immigration Judge's discretionary analysis was flawed because it considered only adverse factors and ignored the positive ones, of which there are many.

ARGUMENT

I. The Immigration Judge Erred in Holding That Respondent Failed to Establish a Continuous U.S. Presence for the Last 10 Years

To qualify for cancellation of removal, Respondent had to establish that he "has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application." INA § 240A(b)(1)(A). The "stop-time rule" at INA §240A(d)(1) terminates the accrual of continuous physical presence upon service of the Notice to Appear. Because he was served with the NTA on [MONTH, DAY] 2020, Respondent bore the burden of establishing that he entered the United States on or before [MONTH, DAY] 2010. The record evidence is more than sufficient to meet that burden.

A. Respondent's Testimony Was Credible, Unchallenged, and Supported by Substantial Evidence

Respondent testified that he entered the United States in April 2007 and that he has not left the United States since that time, a period of over 13 years. Tr. at 32; *see* Exh. 4 (Tab A). The Immigration Judge determined that this testimony was credible. IJ at 6. DHS did not cross-examine or otherwise challenge Respondent over this testimony. In fact, DHS conceded in its closing argument that Respondent has been "in the United States in the last 10 years." Tr. at 73. Nothing more is required for Respondent to meet his burden under these circumstances. *See Vera-Villegas v. I.N.S.*, 330 F.3d 1222, 1225 (9th Cir. 2003) ("[T]he time element of an alien's residency, like all other elements in immigration hearings, may be shown by credible direct testimony or written declarations.").

Moreover, the record is replete with evidence demonstrating that Respondent has had a "continuous presence" in the United States and not a sporadic or fleeting one. Respondent's request for relief is premised on the notion that his removal would take him away from his

home—where has lived with his partner and their two U.S. citizen children, who were born in New Jersey and have lived their whole lives there. Tr. at 31-32. There is no evidence suggesting that Respondent has ever left the United States since he has been here.

With respect to the date of entry, in addition to Respondent's credible testimony that arrived in April 2007, Respondent submitted his registration form for the _____ Institute, a school that offers classes for English as a Second Language (ESL), which shows that, *as of May 2008* (and then again as of May 2014), Respondent had been enrolled at the location in West New York, N.J., where he lived at the time. Tr. at 68; Exh. 5 (Tab P); *see also* Exh. 3 (Form 42B, Q16). Respondent also submitted a copy of his Guatemalan passport, which was issued to him at the Guatemalan consulate *in New York City on December 12, 2008*. Tr. at 68; Exh. 5 (Tab Q). Furthermore, the evidence shows that Respondent met Zzzz sometime *in 2010* and that they moved in with each other a year later. Exh. 4 (Tab A); *id*. (Tab B); *see also* Tr. at 31.

B. The Immigration Judge Had No Basis to Require Corroboration and Failed to Provide "Notice and Opportunity" to Corroborate

Despite finding his testimony credible (and even though DHS effectively conceded the issue), the Immigration Judge held that Respondent failed to meet his burden because there was "a lack of documentary evidence that would assist in corroborating his claim, such as utility bills, leases, bank statements, [or] cell phone bills, to prove that the respondent has been present continuously for the last 10 years." IJ at 6-7.

While an Immigration Judge may, under certain circumstances, "require otherwise-credible applicants to supply corroborating evidence," those circumstances are limited. For starters, the Immigration Judge must determine that corroborating evidence is necessary and identify the basis for that determination. *See, e.g. Matter of Almanza-Arenas*, 24 I&N Dec. 771, 774-75 (BIA 2009) (requiring corroboration where witness was credible, but evidence was

ambiguous); *see also Toure v. Atty. Gen.*, 443 F.3d 310, 325 (3d Cir. 2006) ("[A]s a logical predicate to appellate review," the Immigration Judge must "adequately explain the reasons for its decisions.").

Once that determination is made, the Immigration Judge must "give the applicant notice of what corroboration will be expected and an opportunity to supply that evidence." *Saravia v. Attorney General*, 905 F.3d 729, 738 (3d Cir. 2018) (reaffirming the three-part "*Abdulia* inquiry"). This requires the Immigration Court to: "(1) identify the facts for which it is reasonable to expect corroboration; (2) inquire as to whether the applicant has provided information corroborating the relevant facts; and, if he or she has not, (3) analyze whether applicant has adequately explained his or her failure to do so." *Luziga v. Attorney Gen.*, 937 F.3d 244, 255 (3d Cir. 2019) (citations and quotation marks omitted). "Where an IJ fails to develop a noncitizen applicant's testimony in accord with the *Abdulai* steps and hold[s] the lack of corroboration against [the] applicant, we vacate and remand." *Id.* (citations and quotation marks omitted).

Here, despite finding Respondent's testimony credible, the Immigration Judge found that corroborating evidence was necessary. But the Immigration Judge never identified, let alone "adequately explain[ed]" the reason for that determination, *Toure*, 443 F.3d at 325, and there is no reason to believe any exists. Unlike in *Matter of Almanza-Arenas*, for example, there is nothing ambiguous about Respondent's testimony that he entered the United States in April 2007 and has remained here ever since. *See* 24 I&N Dec. at 774.

Regardless, no deference is owed to "findings and conclusions . . . based on inferences or presumptions that are not reasonably grounded in the record." *Dia v. Ashcroft*, 353 F.3d 228, 249 (3d Cir.2003) (en banc). At a minimum, remand is appropriate. *Liu v. Holder*, 575 F.3d 193,

198 (2d Cir. 2009) (remand appropriate where the Immigration Judge "failed to explain his reliance on lack of corroborating evidence").

Moreover, the Immigration Judge disregarded her obligation to apply the *Abdulai* rule—or *any* of its three steps. *First*, the Immigration Judge did not identify which facts needed corroboration: Was it that Respondent entered in the United States in April 2007? Was it that he has remained here since? Or was it something else? *See Abdulia*, 239 F.3d at 255 (notice requires explanation of "what *particular* aspects of [the applicant's] testimony" need corroboration). "Without knowing that," appellate review "is impossible." *Id.*

Second, assuming the relevant fact at issue is Respondent's date of entry, corroborating evidence has already been provided: Respondent's ESL registration and his Guatemalan passport, both of which are evidence that Respondent was present in the United States at least as of 2008. Although Respondent specifically discussed these documents at the hearing, the Immigration Judge made no reference to them in her decision. Tr. at 68; Exh. 5 (Tabs P and Q).

Third, even if the first two requirements were met, the Immigration Judge failed to give Respondent an opportunity to corroborate. At most, the Immigration Judge asked Respondent to explain "why he *had not* submitted corroborating evidence," *see* Tr. at 68, but was required to ask "whether he *could* not corroborate his testimony," if given an opportunity to do so in light of the notice provided. *See Saravia*, 905 F.3d at 738 (emphasis in original). In fact, Respondent, through counsel, specifically requested that, to the extent the Immigration Judge found the evidence insufficient, that Respondent be provided an opportunity to obtain it. Tr. at 70.

II. The Immigration Judge Erred in Holding That Respondent Failed to Establish Exceptional and Extremely Unusual Hardship

The evidence shows that Respondent's removal to Guatemala would result in "exceptional and extremely unusual hardship" to his two U.S. citizen children, Yyyy (age 8) and

Dddd (age 5). Respondent is a primary parental figure involved in all aspects of his children's lives, who, together with Zzzz, provide Yyyy and Dddd with economic and emotional stability and have helped them develop into happy, active, and confident children. Exh. 4 (Tabs C and L). As documented in the psychological assessment of Dr. JL, Psy.D, Respondent's extended absence from the home and separation from his children has already had devastating effects on Yyyy's (and Dddd's) wellbeing that, in Dr. JL's professional opinion, go beyond what is to be expected when being separated from a parent. Exh. 4 (Tabs H and K).

The evidence further shows, among other things, that Yyyy would be uniquely harmed by Respondent's removal because of her language disorder, which requires her to continue to receive the specialized treatment and access to resources that she is receiving in the United States. Exh. 4 (Tabs H-J). However, the evidence shows that these are not available in Guatemala or in the Dominican Republic, which is where Yyyy and Dddd are likely to go unless Zzzz is somehow able to afford to stay in the United States as a single parent and without any other family support. Exh. 4 (Tabs M-O); Exh. 7 (Tabs W and X); Tr. at 48-49, 52, 65, 66-67, 72.

Under the Board's precedents, the evidence in record is sufficient to establish that Respondent's removal would result in "exceptional and extremely unusual hardship" to his U.S. citizen children. *See Matter of J-J-G-*, 27 I&N Dec. 808 (BIA 2020); *In re Recinas*, 23 I&N Dec. 467 (BIA 2002).

A. The Immigration Judge's Analysis Completely Disregards Evidence That Respondent's Children Will Have to Relocate to the Dominican Republic

The Immigration Judge evaluated the requisite hardship that would result from Respondent's removal as if the children would remain in the United States. IJ at 7-9. The Immigration Judge concluded that evidence of "the children's current living situation" does not

reflect "financial hardship [that] is exceptional and extremely unusual." IJ at 8. That analysis, however, misunderstands Respondent's legal theory—*i.e.*, given the financial hardship resulting from Respondent's absence, Yyyy and Dddd are likely to relocate to the Dominican Republic, *and that this relocation* will result in exceptional and extremely unusual hardship. The Immigration Judge did not analyze *that* question. In fact, the Immigration Judge's analysis does not at all mention the Dominican Republic or the effects that moving there would have on Yyyy and Dddd.

The importance of the Dominican Republic to Respondent's theory of relief is hard to overlook. The evidence clearly demonstrates that, given the financial burdens Zzzz would have to face as a single parent without support from family or friends in the United States, Zzzz and the children will likely have no choice but to relocate to the Dominican Republic, where Zzzz was born and still has family. Tr. at 72. According to Zzzz, "[w]e are having many economic difficulties without Xxxx. It is not easy to cover all expenses without the help of Xxxx." Exh. 4 (Tab B).[1] Respondent, who speaks almost daily to Zzzz, similarly testified about how his absence has already affected his family financially: "I've been here [in detention] for five months and we've lost everything, the apartment, everything. My wife has no cable, no internet," Tr. at 49, and "[t]hey had to leave the apartment because they . . . can't afford the rent," Tr. at 51. Further, because Zzzz would need to get a full-time job outside of the house, she would also need to pay for childcare. And Zzzz's experience so far indicates how little this leaves to cover her family's costs. At the job she found working a few days a week, "she gets paid $100 and then she has to pay $50 for the childcare for the two children." Tr. at 49.

[1] Zzzz was available to testify telephonically, but the Immigration Judge found it was not necessary. Tr. at 67.

Moreover, the evidence shows that situation facing Zzzz and the children is even more precarious given that their school is 100% virtual due to the COVID-19 pandemic, Exh. 7 (Tab V)—which means that whoever is home watching Yyyy and Dddd must also help them with their tablets and internet issues, explain what the teacher is saying, and above all, keep the children focused on the screen for hours at a time. Respondent reiterated those exact concerns: "But if my wife has to work, how would they eat? There is no way for them to sit in front of a computer. My wife would need to be there with them." Tr. at 50.

Respondent testified clearly about the consequences that his removal would have on the family's economic situation: "And if I am deported, ***there wouldn't be a way*** . . . . "[I]t would be very difficult for my wife to work. ***And if she doesn't work, then how will they survive? You can't.***" Tr. at 49-50 (emphasis added). And Respondent testified clearly about the consequences of his financial hardship: "***They will go to the Dominican Republic where my wife is from***." Tr. at 52 (emphasis added). Importantly, the evidence shows that relocating Yyyy and Dddd to the Dominican Republic would likely result in almost all the same concerns as would relocating them to Guatemala—including that it "would be impossible" for Yyyy to receive the treatment she needs for language disorder and mental health issues. Tr. at 52; Exh. 4 (Tabs M-O).[2]

[2] If Respondent were deported, relocating his family to Guatemala is simply not a viable option. Exh. 3-A (Form 42B, Q.44); Tr. at 48-49, 65, 66-67, 72. The evidence shows: that Guatemala has some of the highest rates of crime and violence in Latin America, and there are few social services and little economic opportunity, Tr. at 48-49; Exh. 7 (Tabs W and X); that Yyyy and Dddd have their whole lives here, do not know anyone in Guatemala, and are English-dominant, Tr. at 48-49; that Respondent will not be able to support them financially in Guatemala, Tr. at 49; and that the only relative he has there is his sister, on whom Respondent cannot rely for financial support or a place to live, Tr. 65, 66-67. The evidence also shows—and neither the Immigration Judge nor DHS dispute—that Yyyy would be unable to receive adequate treatment for her language disorder in Guatemala, because it "does not exist" and even if it did for the few who could afford it, "financially [Respondent] would not be able to give it to her." Tr. at 48; Exh. 7 (Tabs W and X).

The Immigration Judge's failure to consider Respondent's argument regarding the Dominican Republic and the evidence in support of it is legal error. *See Abdulai*, 239 F.3d at 549 ("A decisionmaker must actually consider the evidence and argument that a party presents.") (citation and quotation marks omitted).

At most, the Immigration Judge noted that "there is insufficient evidence to demonstrate" that Zzzz could not "obtain a full-time job" and thus remain in the United States. IJ at 8. However, this reflects the Immigration Judge's *conclusion* to reject facts admitted into evidence—not a "specific, cogent *reason*" for doing so that "flow in a reason way" from any of the evidence described above. *See Caushi v. Atty. Gen.*, 436 F.3d 220, 226 (3d Cir. 2006), *as amended* (Mar. 22, 2006). Whatever assumptions the Immigration Judge made about the ability of single mothers to find full-time work, those assumptions were unstated and not reasonably grounded in the record. *See Cordero-Trejo v. I.N.S.*, 40 F.3d 482, 487 (1st Cir. 1994) ("deference is not due where findings and conclusions are based on inferences or presumptions that are not reasonably grounded in the record, viewed as a whole") (citations omitted).

Moreover, the Immigration Judge's conclusion does not account for the evidence showing that Zzzz will also have to pay for childcare costs, which will significantly reduce her income that can be used on all other costs (by 50%, based on Zzzz's real-world experience so far). Nor does the Immigration Judge's conclusion consider how Zzzz's ability to find a full-time job will be affected by the children's virtual learning requirements. The Immigration Judge's conclusion that Zzzz should be able to find a full-time job is "not reasonably grounded in the record, viewed as a whole." *See Cordero-Trejo*, 40 F.3d at 487.

B. The Immigration Judge's Finding on Yyyy's Mental Health Contradicts the Expert Opinion of the Psychologist That Evaluated Yyyy

Dr. JL, the psychologist who evaluated Yyyy (and many other child victims of trauma), is undisputedly qualified to render psychological opinions, including on PTSD in children. *See* Exh. 5 (Tab R).[3] Dr. JL's opinion makes clear that Yyyy's symptoms stem from her "exposure to traumatic events"—namely, that "Yyyy witnessed part of her father's detainment [by ICE] and then learned of the remaining events from her mother and brother, who witnesses the entire event." Exh. 4 (Tab H at 6). Further, Dr. JL's opinion carefully describes the ways in which Yyyy's symptoms go beyond ordinary feelings of sadness and impair her daily functioning. *Id*. For example, after witnessing Respondent's arrest, "Yyyy experienced recurrent, and intrusive, distressing thoughts, nightmares and prolonged psychological distress, specifically, increased worry, sadness and tearfulness." *Id.* Other symptoms documented by Dr. JL include "avoidance of the event," "changes in her mood," and "changes in her arousal and reactivity." *Id.* Dr. JL observed that Yyyy "developed fears of separation, a lack of security" and "now fears that not only will she not see her father again, or that her mother will be arrested next, she also fears that she, as a seven-year-old child, will also be arrested." *Id.* at 7. Dr. JL concluded: "These thoughts exemplify the negative impact that her traumatic exposure had on her view of self, others and the world, and require intensive, evidence-based psychotherapeutic intervention." *Id.*

The Immigration Judge was not persuaded. Citing no legal authority, the Immigration Judge stated that "the fact that Yyyy meets the criteria for [a] diagnosis" of PTSD does not qualify as an exceptional and extremely unusual hardship. IJ at 8. The entirety of the Immigration Court's assessment of Dr. JL's opinion is that, in the Immigration Judge's view,

[3] Dr. JL was available to testify telephonically, but neither the Immigration Judge nor DHS had questions for her. Tr. at 67. The Immigration Judge characterized Dr. JL's report as "pretty thorough." *Id.*

Yyyy's clinically documented PTSD symptoms are "to be expected by a child being separated from their parent." IJ at 8-9.

Here, the Immigration Judge's analysis is too sparse to even "allow a reviewing court to conclude that [the Immigration Judge] has thought about the evidence and the issues" discussed in Dr. JL's report and then "reached a reasoned conclusion." *Raza v. Gonzales*, 484 F.3d 125, 128 (1st Cir. 2007). Whatever assumptions the Immigration Judge made about the nature of PTSD and how the experiences of parent-child separation of a child with PTSD compare to those of a child without PTSD, those assumptions are unstated and not grounded in the record. *See Cordero-Trejo*, 40 F.3d at 487. Even if they were, the position endorsed by the Immigration Judge—that a child who meets criteria for PTSD will experience the same symptoms as one who does not—cannot be reconciled with Dr. JL's opinion, which clearly explain why Yyyy's symptoms are uniquely inhibiting and tied to her particular exposure of the traumatic event.

III. The Immigration Judge's Discretionary Analysis Was Flawed Because It Addressed Only Adverse Factors While Ignoring the Favorable Ones

In determining whether the Respondent merits relief an exercise of discretion, the Immigration Court, "upon review of the record as a whole, 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). Favorable considerations include "family ties within the United States, residence of long duration in this country . . . , evidence of hardship to the respondent and his family if deportation occurs . . . and other evidence attesting to a respondent's good character." *Id.*

Here, the Immigration Judge's discretionary analysis consists of identifying only adverse factors (and presents them in a one-sided way without any context). IJ at 9. Despite its obligations, the Immigration Judge did not "balance" these adverse factors with the favorable ones, and there were plenty to choose from. *See C-V-T-*, 22 I&N at 11. The Immigration Judge's failure to do so is particularly striking in case like this one, where there is no evidence that Respondent has been convicted or accused of committing a disqualifying crime, and where the Immigration Judge made no adverse finding on moral character.

A. The Immigration Ignored the Favorable Factors

The evidence shows that Respondent is a good man and a loving and committed father and partner. Respondent provides the sole financial support for his family, while Ms. Tejada is devoted to childcare. Tr. at 32. While Respondent works long hours, he is "100 percent" involved in the day-to-day aspects of his children's lives. Tr. at 35. Respondent testified that he helps put the children to bed every night and says prayers with them. Tr. at 36. Respondent also helps Yyyy with her math homework and art projects. Tr. at 36. "I try to stay 100 percent involved in their lives." Tr. at 36.

Respondent is also very involved in extracurricular activities for the children. Tr. at 36. "I take my children every day to karate, Monday through Friday. On Saturday, my daughter has ballet, my son has hip hop. And on Sundays we have breakfast together. Everything is based around the family." Tr. at 35. He has encouraged his children to take these classes, which they thoroughly enjoy. Tr. at 36. Respondent often has to leave work early to take them to their class and recitals, but he makes the effort because "[i]t makes them happy." Tr. at 36. Respondent testified that "[t]hey always want to go and they're always ready when I get home from work."

Tr. at 37. It is also "very important" to him because these activities help his children "physically . . . mentally, [and] emotionally." Tr. at 36.

Respondent is "very close" with Yyyy and Dddd. Exh. 4 (Tab B). Respondent testified that his relationship with Yyyy is "incredible": "[S]he is a very good girl. She has such good feelings . . . she's a very good-hearted girl. I love her. I am in love with my daughter." Tr. at 38. He is also close with Dddd: "We play with the PlayStation and we dance, and my daughter will dance along with us too." Tr. at 38. Respondent testified that he has tried to be a good "an example of a good father" for his children, which is something he never had growing up. Tr. at 38.

The evidence shows that Respondent came to this country fleeing a childhood of poverty and abuse. Tr. at 43. He had to start working at the age of 8 selling shampoo door-to-door in different parts of Guatemala. Tr. at 45; Exh. 4 (Tab A). He was not raised by his parents and was the sole support for his grandparents, requiring him to work on various "banana farms" during his adolescence. Tr. at 45; Exh. 4 (Tab A). Respondent made the difficult decision to come to the United States for the laudable reasons of economic opportunity and providing a better life for his future children than he had. Tr. at 45; Exh. 4 (Tab A).

After years of hard work, respondent was able to start his own construction business. Tr. at 32-33. He has been able to get business because of his good reputation: "When I do good work, then I get referrals, and those people then recommend me to their relatives and their friends, and so I continue to build work" based on "the good work that I do." Tr. at 34. Through his job, he has made relationships with others in the community: "[S]ome of my clients are now my friends. . . . [W]e share cookouts together," and he has been invited to birthday party's and other events. Tr. at 34.

Respondent is generous and genuinely wants to help others. After coming to the United States, Respondent send money back to his grandparents and sister in Guatemala. Tr. at 47. Even while detained, Respondent strives to help others and keeps a positive attitude. Tr. at 47. He has been involved in the religious services at the detention center and was recently chosen to lead the services by a former detainee who was a pastor: "I "I was always with the pastor, and I would help him with the service inside the dorms here. I would always help, and so he saw that . . . I had knowledge of the Word and the bible, and especially the passage that says those who are last will be first. And he saw how I would always serve others and . . . helping them. And I know that it is not easy to be locked up in here. It isn't easy for anyone. And so I remind them that God is always good." Tr. at 48.

B. The Immigration Judge Presented the Adverse Factors in a One-Sided Manner Without Context

The Immigration Judge noted that Respondent has pled guilty to a DUI charge. IJ at 9. The Immigration did not mention that this was Respondent's first and only arrest, and that he accepted the plea so that the charges regarding the allegedly false license would be dismissed—which they in fact were. Tr. at 42. Regarding the night of the arrest of the DUI, the evidence shows, consistent with the account provided in the police report, Exh. 5 (Tab S), that Respondent had not been driving in an unsafe manner. Tr. at 40. In fact, the reason Respondent was pulled over was because "I made a right, and immediately I went into the left lane." Tr. at 39. Respondent did not know that was against the law. Tr. at 40. Further, despite the transcription error in the record the proceeding, Respondent *did* have his right turn signal on, which is also corroborated in the police report. Tr. at 40; Exh. 5 (Tab S). Respondent testified that the first time he was asked if had been drinking was *after* he was taken to the Guttenberg police station.

Tr. at 40; Tr. at 58-59. The reason that Respondent refused the breathalyzer test was because "I felt afraid; I panicked. And so I refused. But I regret not having done it because it would have turned up clean and I wouldn't have had this problem today." Tr. at 41.

The Immigration Judge also omitted Respondent's explanations regarding his decision to obtain a Maryland license, Tr. at 56, 58, and not doing his taxes, Tr. at 43. Respondent testified If given a second chance, "I promise to pay every last cent of my taxes that are owed" and every one of them in the future. Tr. at 43.

There is no evidence that Respondent has been involved in any violence or harm. And the sole evidence of any harm to property is related to a single fender bender from several years ago, which resulted in a "small scrape, a scratch on a car." Tr. at 61.

Finally, the Immigration Judge also failed to document that Respondent demonstrated remorse. *See, e.g.*, Tr. at 53 ("I deeply regret with I have done. I am very sorry. I promise never to make any other mistakes. I ask for an opportunity. . . . [M]y family needs an opportunity."); Tr. at 41 ("I am very regretful for not having followed the law. I wish I had not, and I regret it.").

CONCLUSION

For the reasons above, Respondent respectfully submits that the Board reverse the decision of the Immigration Judge and remand for further proceedings.

Dated: _____ Respectfully submitted,

_____
[ATTORNEY NAME]
[ADDRESS]

DETAINED

CERTIFICATE OF SERVICE

I, [NAME], hereby certify that I served by U.S. mail on [DATE] a copy of this Brief in Support of Respondent's Appeal to the Office of the Chief Counsel of the Department of Homeland Security at the following address: 625 Evans Street, Room 135, Elizabeth, NJ 07201.

_____ _____

[NAME] Date
[ADDRESS]