



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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180 Ted Turner Dr., SW, Ste 332  
Atlanta, GA 30303

Name: M [REDACTED] G [REDACTED] J [REDACTED] A [REDACTED] 080

Date of this notice: 10/21/2016

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:  
Greer, Anne J.  
Kendall-Clark, Molly  
O'Herron, Margaret M

TrenC  
User team: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED] 080 – Atlanta, GA

Date:

OCT 21 2016

In re: J [REDACTED] T [REDACTED] M [REDACTED] G [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Shirley Cristina Zambrano, Esquire

ON BEHALF OF DHS: Sirce E. Owen  
Deputy Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled (found)

APPLICATION: Reconsideration; reopening

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's May 13, 2016, decision denying her timely motion to reconsider filed in response to the denial of her timely motion to reopen proceedings, based on exceptional circumstances and seeking to rescind her in absentia order of removal. *See* sections 240(b)(5)(C)(i), (e)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(i), (e)(1); 8 C.F.R. § 1003.23(b)(4)(ii). The Department of Homeland Security opposes the appeal. The appeal will be sustained, the motion will be granted, the matter will be reopened, and the record will be remanded to the Immigration Judge for further proceedings consistent with this opinion.

We review findings of fact, including credibility findings, for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

A motion to reconsider requests review of a decision based on an alleged error of law or fact in a prior decision. *See* 8 C.F.R. § 1003.23(b)(2); *Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991). In her motion to reconsider, the respondent maintains that the Immigration Judge erred in declining to find exceptional circumstances warranting rescission of her in absentia removal order or, alternatively, warranting sua sponte reopening (Respondent's Motion to Reconsider at 3-4; Respondent's Brief at 5-8).

Given the totality of the particular circumstances present in this case we agree with the respondent that exceptional circumstances exist warranting rescission of her in absentia order and reopening. In particular, we take into account the respondent's young age at the time of the in absentia hearing and her mother's statement that the respondent missed the hearing due to a

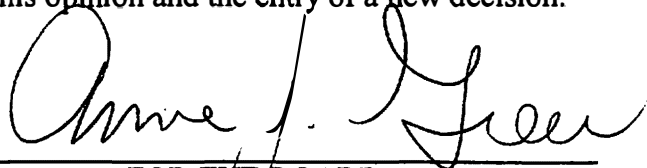
calendaring error on the mother's part (Exhs. 1-2; Respondent's Motion to Reopen at 2-3, Tab B; Respondent's Motion to Reconsider at 3-4; Respondent's Brief at 5-8, Tab C). In addition, the respondent asserts that she is potentially eligible for relief from removal, and she has submitted evidence that she is the beneficiary of a pending special juvenile immigrant visa petition (Form I-360) (Respondent's Motion to Reopen at Tab C; Respondent's Motion to Reconsider at Tabs B-C; Respondent's Brief at Tab I).

On remand, the Immigration Judge will consider whether good cause exists for a continuance or whether administrative closure is appropriate pending the adjudication of the respondent's special juvenile immigrant petition or any other application that she may wish to pursue and over which United States Citizenship and Immigration Services (USCIS) has original jurisdiction (Respondent's Brief at Tabs I-J). *See, e.g., Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (setting forth factors to consider in determining whether a continuance is warranted pending adjudication by USCIS of a visa petition); 8 C.F.R. § 1003.29; *see also* section 235(d)(7)(B) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457, 112 Stat. 5044, as codified at section 208(b)(3)(C) of the Act (explaining when USCIS has original jurisdiction over an asylum application filed by a child in removal proceedings); Memorandum from Ted Kim, USCIS Acting Chief, Asylum Division (May 28, 2013), *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, HQRAOI 120/12a.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The motion to reconsider is granted, the matter is reopened, the in absentia order is rescinded, and the record is remanded to the Immigration Judge for further proceedings consistent with this opinion and the entry of a new decision.

  
\_\_\_\_\_  
FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
ATLANTA, GEORGIA

In the Matter of:

M [REDACTED] G [REDACTED] J [REDACTED]

Respondent

In Removal Proceedings

A: [REDACTED]-080

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of **MOTION TO RECONSIDER RESPONDENT'S MOTION TO REOPEN IN ABSENTIA REMOVAL PROCEEDINGS AND REQUEST FOR STAY OF REMOVAL**, it is HEREBY ORDERED that the motion be ☐ GRANTED ☒ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per \_\_\_\_\_

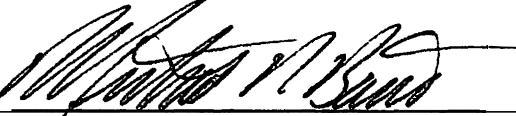
Deadlines:

*Other: It is the respondent's parent or guardian who is responsible for getting to court. That is implicit in the statute and regulation. Matter of Glendi Gomez-Gomez,*

- ☐ The application(s) for relief must be filed by 23 Jan Dec. 522 (B5 A 2002).
- ☐ The respondent must comply with DHS biometrics instructions by \_\_\_\_\_.

Date

5/13/16

  
Immigration Judge

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