



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MUNOZ-POCASANGRE, EDWIN ... A 209-345-161

Date of this notice: 1/19/2018

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:
Grant, Edward R.

USCIS
User team: Docket

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Don

Falls Church, Virginia 22041

File: A209 345 161 – Hartford, CT

Date: **JAN 19 2018**

In re: Edwin Rene MUNOZ-POCASANGRE a.k.a. Edwin Salazar-Fivaral

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Holli B. Wargo, Esquire

APPLICATION: Continuance

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's decision dated May 10, 2017, denying his motion for a continuance, for the purpose of awaiting the adjudication of the respondent's U visa application pending before United States Citizenship and Immigration Services ("USCIS"). The record will be remanded.

We review 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). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that he established good cause for the Immigration Judge to have either continued or administratively closed these proceedings. In *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012), we stated that continuances to await the adjudication of a pending U visa application may be granted based on the consideration of several factors. Those factors include: (1) the Department of Homeland Security's (DHS) position with respect to the request, (2) whether the underlying visa petition is prima facie approvable, and (3) the reason for the continuance request, along with any other relevant procedural factors. *Matter of Sanchez Sosa*, 25 I&N Dec. at 813-14. The Immigration Judge denied the respondent's request for a continuance because the DHS opposed the request; because the respondent was detained at the time of the hearing; and on account of the extensive backlog of U visa applications pending before the USCIS (I.J. at 2-3). However, the respondent is no longer a detained alien. In addition, the Immigration Judge did not consider the likelihood of the respondent's U visa being granted by (1) first inquiring whether the respondent has demonstrated that he suffered substantial physical or mental abuse as the victim of a qualifying crime, and if so, (2) next exploring whether the respondent has been, is being, or will be helpful to the authorities. *Matter of Sanchez Sosa*, 25 I&N Dec. at 813-14. In light of the foregoing, the record will be remanded for the Immigration Judge to further evaluate the respondent's continuance request and to specifically apply the factors set forth in *Matter of Sanchez Sosa*.

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HARTFORD, CONNECTICUT

File: A209-345-161

May 10, 2017

In the Matter of

EDWIN RENE MUNOZ-POCASANGRE
RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: Section 212(6)(A)(a) of the Immigration and Nationality Act --
present without having been admitted or paroled.

APPLICATIONS: Motion for continuance for adjudication of a U-visa application.

ON BEHALF OF RESPONDENT: Pro Se

ON BEHALF OF DHS: Leigh Mappedbeck, Senior Attorney

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent was served with a Notice to Appear by an immigration officer on April 10th of 2017. Respondent first appeared before the court on April 21st, 2017. The matter was continued to May 3rd for respondent to obtain counsel. The record reflects that attorney Jennifer Rodriguez was working on a U-visa. Then the matter was continued for today for the respondent to get another chance to get an attorney. He's unfortunately been unable to obtain an attorney.

The respondents admits the allegations in the Notice to Appear, that he is a citizen of Guatemala who ~~was~~ present without having been admitted or paroled. Accordingly, removability has been established by clear and convincing evidence.

The respondent indicates he does not have a fear of going back to Guatemala. ~~He~~ ~~Does~~ does not appear to be eligible for any other form of relief such as an I-589 application or cancellation of removal because he lacks qualifying relatives. Respondent did submit evidence that a U-visa application was filed on his behalf on April 11~~th~~ of 2017. The document reflects that the respondent was a victim of an assault in 2006 and he was stabbed in a robbery. The court would note that there is a law enforcement certification dated January 3~~rd~~ of 2017.

Then the record reflects that the respondent was arrested in December of 2005 for assault and a probation violation. According to the I-213, he was sentenced in 2008 to six months, execution suspended, and 18 months' probation ~~period~~. Then in March of 2009, he was arrested for DUI and pled guilty to DUI. And he was recently arrested in August of 2016 for shoplifting. The respondent claims that, even though he is innocent, he pled guilty to avoid jail. The court would note that, throughout these proceedings, respondent is detained at government expense.

The issue in this case is whether the respondent's case should be continued or administratively closed based on his U-visa application. The court reviewed the BIA decision in Matter of Sanchez-Sosa, 25 I&N Dec. 807 (BIA 2012). The court must consider DHS's response to the motion to continue. DHS is opposed. The other issue is whether the underlying visa petition is prima facie approvable. One of the unknown factors in this case is whether the respondent would need a waiver because of his criminal history. Respondent may require a waiver under section 212(d)(3)(A) of the Act. The other factors are at the reason for the continuance and

other procedural factors. The court would note that the U-visa application was just filed about a month ago. ~~And it appears.~~ The court would note that U-visa applications usually take years to adjudicate. The respondent is now detained at government expense. He's been unable to post a \$15,000 bond that was set on April 21st. The court would note that an alien subject to an order of removal may seek a stay from DHS to await the adjudication of a U-visa under section 237(d) of the Act and may file a motion to reopen and terminate removal proceedings under 8 C.F.R §1214.14(c)(5)(i). The court finds that the fact that the respondent is detained at government expense to be a significant factor as a procedural matter. The court would also note that the respondent may continue to pursue his U-visa application from overseas and again, may request a stay of removal from DHS. See 8 C.F.R. §21241.6(a). The court acknowledges that, if he is deported~~does go overseas~~, he~~it~~ would require a waiver for unlawful presence, and it's unclear whether the respondent would be eligible for that waiver. ~~The court notes with a note that -- the court has no jurisdiction over a U-visa application.~~ The Court also notes that he has a criminal record in the US over several years. Considering all the factors in the Matter of Sanchez-Sosa in their entirety, and in light of the respondent's own criminal history, the court will deny the request for continuance and admin closure to seek the U-visa application.

ORDER

It is hereby ordered that the respondent's request for a continuance to -- for CIS to adjudicate the U-visa is denied.

It is further ordered that the respondent be removed to Guatemala.

Please see the next page for electronic

signature

MICHAEL W. STRAUS
Immigration Judge

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