



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: E [REDACTED]-G [REDACTED], N [REDACTED] A [REDACTED]... A [REDACTED]-158

Date of this notice: 2/3/2020

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:
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A-158 – Batavia, NY

Date:

FEB 03 2020

In re: N-A-B-G-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jessica L. Perez-Salazar, Esquire

ON BEHALF OF DHS: Jack Niejadlik
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Guatemala, has appealed from the Immigration Judge's decision dated September 26, 2019, that ruled the respondent's applications for relief abandoned, and ordered his removal from the United States.¹ The record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including credibility findings, under a clearly erroneous standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The record reflects that a master calendar hearing was held on August 22, 2019 (Tr. at 19-26). At that time, the Immigration Judge set a date for the filing of the respondent's application for asylum and related relief. The respondent and counsel were advised that an application that was not signed by the respondent or otherwise improperly filed would not be accepted, and the opportunity to file the application deemed abandoned (Tr. at 23-25). *See* 8 C.F.R. § 1003.31(c) (the opportunity to file applications and related documents shall be deemed waived if not filed within the time set by the Immigration Judge); *Matter of R-R-*, 20 I&N Dec. 547, 549 (BIA 1992).

A notice found in the record, signed by the Immigration Court clerk, indicates that the asylum application was rejected for non-compliance with filing requirements because it was not an original application with the respondent's original signature.² Counsel claims that the original application, bearing the respondent's original signature, was filed with the Immigration Court (Respondent's Br. at 3). However, counsel only submitted a partial photocopy of the application, without any attestation or other evidence to corroborate that assertion.

¹ The Department of Homeland Security filed a motion for summary affirmance of the Immigration Judge's decision. However, the motion does not meaningfully address the Immigration Judge's legal findings or conclusion, nor any of the issues raised on appeal.

² The application that was filed with the Immigration Court is not found in the record.

The Immigration Judge's brief decision only states that the respondent failed to file his application within the time allotted, and it was therefore considered abandoned. The Immigration Judge did not make factual findings or explain why she ruled that the application was not filed within the time allotted, nor did she reference the notice rejecting the application. Thus, we are unable reach any conclusion concerning whether the application was properly deemed not filed.

Nevertheless, the respondent has presented a sufficient basis to raise concerns that she was not afforded due process in this matter. As noted by the respondent on appeal, the notice concerning the rejection of her asylum application was not issued until September 27, 2019, the day after the Immigration Judge ruled the application abandoned and ordered the respondent removed (Respondent's Br. at 5-7). Section 3.1(d)(i) of the Immigration Court Practice Manual contemplates that an alien shall be advised of and have an opportunity to correct defective filings. Inasmuch as the notice of the defective filing was not issued until after the Immigration Judge issued her order of removal, it follows that no such opportunity was provided to the respondent.

Under the circumstances, to insure that the respondent is afforded all due process, we will return the record to the Immigration Judge allow the respondent another opportunity to properly file applications for relief. The following order will be entered.

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



FOR THE BOARD