U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 20530

GOMEZ-AMAYA, JOSE SANTOS
A205-881-617
STEWART DETENTION FACILITY
146 CCA ROAD
LUMPKIN, GA 31815

DHS/ICE Office of Chief Counsel - SDC
146 CCA Road
Lumpkin, GA 31815

Name: GOMEZ-AMAYA, JOSE SANTOS **A 205-881-617**

Date of this notice: 11/5/2013

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:
Holmes, David B.
Miller, Neil P.
Kendall-Clark, Molly

schuckec
Userteam: Docket

File: A205 881 617 – Lumpkin, GA

Date: NOV -5 2013

In re: JOSE SANTOS GOMEZ-AMAYA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Continuance

The respondent, a native and citizen of El Salvador, has appealed from the Immigration Judge's decision dated June 24, 2013. The appeal will be sustained and the record will be remanded to the Immigration Court for further proceedings. The respondent's fee waiver request is granted. *See* 8 C.F.R. § 1003.8(a)(3). The respondent's request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e)(7).

We review the findings of fact made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge ordered the respondent removed, finding that the respondent abandoned his application for relief by not having the application completed in the duplicate and ready to be submitted, as instructed at the previous master hearing 2 weeks before (I.J. at 3-4). On appeal, the respondent argues that the Immigration Judge erred in not allowing him more time to file his application for relief (Notice of Appeal, at 2).

Immigration Judges may grant a continuance "for good cause shown." 8 C.F.R. §§ 1003.29 and 1240.6; *see also Zafar v. Attorney General*, 461 F.3d 1357, 1360 (11th Cir. 2006); *Matter of Sibrun*, 18 I&N Dec. 354, 355-56 (BIA 1983). Immigration Judges also have authority to set filing deadlines for applications and related documents. 8 C.F.R. § 1003.31(c). The decision to grant or deny a continuance is within the sound discretion of the Immigration Judge, and will not be overturned on appeal unless it appears that the respondent was denied a full and fair hearing. *Matter of Luviano*, 21 I&N Dec. 235, 237 (BIA 1996); *Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987). In the present case, while the Immigration Judge considered the respondent's application for relief abandoned, it is not clear whether the Immigration Judge considered all of the circumstances presented in the case, including the number and duration of the prior continuance granted, the detained and unrepresented status of the respondent and his lack of familiarity with the English language and the immigration system, and the nature of the relief sought. Under the circumstances presented, we find that good cause for continuance existed. Accordingly, we will sustain the appeal and remand the record to the Immigration Court

for further proceedings to afford the respondent an opportunity to apply for relief from removal that he may be eligible for.[1]

ORDER: The appeal is sustained, and the record is remanded to the Immigration Court for further proceedings consistent with this order, and the entry of a new decision.

FOR THE BOARD

[1] The remand will also afford the respondent an opportunity to seek legal counsel, as appropriate in the circumstances.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
STEWART IMMIGRATION COURT
146 CCA ROAD
LUMPKN, GEORGIA
31815

File: A205-881-617 June 24, 2013

In the Matter of

[JOSE SANTOS GOMEZ-AMAYA]	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended, as an immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, re-entry permit, border crossing card or other valid entry document required by the Act and a valid unexpired passport or other suitable travel document or document of identity and nationality as required under the regulations issues by the Attorney General under Section 211(a) of the Act.

APPLICATIONS: None before the Court. Respondent did not file his application for asylum, withholding and CAT and the Court has deemed it abandoned.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: REID MCKEE, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

INTRODUCTION AND JURISDICTIONAL STATEMENT

On May 14, 2014, the Department of Homeland Security filed a Notice to Appear against the respondent. The filing of his charging document commenced proceedings and vested jurisdiction with this Court. 8 C.F.R. 1003.14(a). The Notice to Appear has been admitted into evidence as Exhibit No. 1.

The respondent is a 21-year-old single male native and citizen of El Salvador who entered the United States on or about March 20, 2013, illegally. The respondent conceded that he is removable as charged pursuant to allegations 1 through 5 and the Court found the respondent removable as charged by clear and convincing evidence.

SERVICE OF THE NOTICE TO APPEAR

The respondent has conceded proper service of the Notice to Appear and based on the respondent's admissions, together with the certificate of service and the statement of his prior counsel, Ms. Sepulveda, the Court finds that the Notice to Appear has been properly served and that the respondent was afforded ten days following the service of the Notice to Appear prior to appearing before an Immigration Judge.

SUMMARY OF EVIDENTIARY RECORD ON REMOVABILITY

Exhibit 1, Notice to Appear.

PROCEDURAL HISTORY

The respondent first appeared before this Court on May 29, 2013. He was given his advisals and made aware of his rights and responsibilities in Immigration Court. On May 29, the respondent acknowledged service of the Notice to Appear. He was given an attorney provider list and the case was reset to June 10, 2013.

On June 10, 2013, the respondent appeared pro se and told the Court that he did not wish to be represented any longer by Attorney Sepulveda who had represented him

on May 30 in his custody hearing. Respondent advised the Court that he did not want Ms. Sepulveda representing him and that he wished to proceed and represent himself. At that time he told the Court that although he was from El Salvador, he wished to designate Mexico as his country of removal and he told the Court that he did not have any ties to Mexico. The Court designated El Salvador as the country for removal for the respondent with Mexico as the country of removal in the alternative.

When asked if the respondent had a fear of returning to El Salvador, he told the Court that he had a problem with the maras. He told the Court that his grandmother has cancer and he told the Court that not to worry her, he decided to come to the United States because he was having problems with the maras. He told the Court that the maras wanted to force him to be part of them.

The Court scheduled the filing deadline for the asylum application for June 24, 2013, which is today, and told the respondent that if he did not have the application package in duplicate, in English, that it would be deemed abandoned.

On June 24, 2013, the respondent advised the Court that he did not have his asylum application and that he had started it, but that he did not have it completed. Respondent told the Court that he had one copy of part one with him, but he did not have a copy for the ICE attorney and that the application was not completed.

The Court told the respondent that his application was abandoned and the Court offered him voluntary departure under safeguards, which he declined.

STATEMENT

To have a hearing for political asylum, withholding of removal and/or Convention against Torture, a respondent must submit his I-589 application to the Court. In this case the respondent was made aware at the time of his last hearing that his application was due to the Court completed today, June 24, 2013. Respondent was also made

aware that his application was due to the Court in English, completed with one copy of the application package for the Court and one copy of the application package for the ICE attorney.

The respondent has failed to come to Court with an application package for the Court and for the ICE attorney. In fact, the respondent has advised the Court that he is seeking more time notwithstanding the fact that the respondent was told that his application package was due in duplicate and in English today or that the application would be abandoned and that he would not have another opportunity to file the application or pursue the application. The respondent was also told of the Court's requirements requiring filings be made timely at the date the Court sets, when he was told of his rights and responsibilities in Immigration Court. Notwithstanding these advisals~~is~~, the respondent has failed to timely file any application.

As there is no application for relief before this Court, the Court has offered the respondent the privilege of voluntary departure under safeguards if he qualifies. The respondent advised the Court that he did not wish for voluntary departure under safeguards, but that instead he wished to file an appeal of his order of removal.

As there is no relief available for the respondent before this Court, the Court has ordered the respondent's removal to El Salvador or, in the alternative, to Mexico.

Based on the foregoing, the Court orders the following:

ORDER

ORDERED that the respondent be removed from the United States to El Salvador or, in the alternative, to Mexico.

IT IS HEREBY ORDERED that the respondent's application for political asylum, withholding of removal and protection under the Convention against Torture are hereby deemed abandoned.

IT IS HEREBY ORDERED that the respondent be removed from the United States to El Salvador or, in the alternative, to Mexico.

The respondent has advised the Court that he wishes to appeal the Court's decision and the respondent has been advised that any appeal that he chooses to file must be received in the office of the Board of Immigration Appeals not later than July 24, 2013.

June 24, 2013

Please see the next page for electronic signature

BARRY S. CHAIT
Stewart Immigration Court
Immigration Judge

Appeal due not later than July 24, 2013, in the hands of the Board of Immigration Appeals.

//s//

Immigration Judge BARRY S. CHAIT

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