



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 22041

**Arbab, Azin, Esq.
The Law Office of Azin Arbab PLC
507½ East Grand River Ave. Suite 5
East Lansing, MI 48823**

**DHS/ICE Office of Chief Counsel - CHI
525 West Van Buren Street
Chicago, IL 60607**

Name: CAMACHO-LUZ, JUAN

A 206-016-499

Date of this notice: 5/10/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.
Adkins-Blanch, Charles K.
Mann, Ana

Lalsages
User team: Docket

**For more unpublished BIA decisions, visit
www.irac.net/unpublished/index/**

Falls Church, Virginia 22041

File: A206 016 499 – Chicago, IL

Date:

MAY 10 2017

In re: JUAN CAMACHO-LUZ a.k.a. Juan Camacho

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Azin Arbab, Esquire

APPLICATION: Continuance

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's decision dated June 1, 2016. The Immigration Judge denied the respondent another continuance and ordered him removed from the United States to Mexico. The record will be remanded.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

On appeal, the respondent argues that he received ineffective assistance of counsel where one of his previous attorneys from the Katz Law Office, Jessica Hernandez, Esquire, failed to submit pertinent information and documents on the date the respondent's individual hearing was scheduled, as requested by the Immigration Judge. At the hearing on September 9, 2015, the Immigration Judge granted a continuance based on a visa petition filed on October 24, 2014, on the respondent's behalf by his United States citizen wife, who is the mother of his United States citizen child (I.J. at 3; Tr. at 8-9). Due to the respondent's criminal history, the Immigration Judge also requested that the respondent's attorney submit several documents at the next hearing, including a copy of the respondent's criminal conviction records.

At the next hearing, on June 1, 2016, the respondent appeared with another attorney from the Katz Law Office, who stated that he had been assigned the case only one week earlier, after the prior attorney assigned to this case, Jessica Hernandez, had suddenly left the law practice and not left detailed notes about the case. The Immigration Judge noted that a number of attorneys from that firm had filed Notices of Appearance on the respondent's behalf. He further noted that the respondent did not comply with the request for documents made by the Immigration Court and found no good cause to grant a further continuance (I.J. at 3; Tr. at 13 and 16).

Although we understand the frustration noted by the Immigration Judge in the handling of this case by the respondent's prior attorneys, all from the same law firm, the respondent's arguments on appeal, including his affidavit, are persuasive that he may have received ineffective assistance of counsel from Ms. Hernandez. Even though it does not appear that the respondent has met all the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), we are persuaded by the arguments on appeal that Ms. Hernandez appears to have abandoned his case and there was insufficient time for the following attorney assigned to the respondent's case to prepare and

submit the required documents. Under these circumstances, we find that a remand is justified to provide the respondent with an opportunity to pursue his claims for relief.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings and the entry of a new decision consistent with the foregoing opinion.



FOR THE BOARD

Board Member Ana Mann respectfully dissents without separate opinion.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
CHICAGO, ILLINOIS

File: A206-016-499

June 1, 2016

In the Matter of

JUAN CAMACHO-LUZ

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: I&N Act, Section 212(a)(6)(A)(i) -- physically present without inspection or admission

APPLICATIONS: Continuance of proceedings

ON BEHALF OF RESPONDENT: STEVE BOGDANOV
4105 West 26th Street
Chicago, Illinois 60623

ON BEHALF OF DHS: WILLIAM PADISH, Assistant Chief Counsel
525 West Van Buren Street
Suite 701
Chicago, Illinois 60607

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 24-year-old married male alien, native and citizen of Mexico. The respondent allegedly crossed the border in 2006 without inspection or admission by an Immigration Officer. Respondent came to the attention of the Department of Homeland Security because of his criminal record. The respondent has

been convicted of apparently two DUI offenses in the United States. The second offense for which the respondent was convicted was completed on May 26, 2013 when respondent received a 1-year sentence to incarceration. The respondent was released from incarceration after about 10 months on March 30, 2014. The Department of Homeland Security immediately sought to remove the respondent from the United States. A Notice to Appear was issued on March 31, 2014 charging the respondent with removability under Section 212(a)(6)(A) of the Act. Before the respondent's hearing could be completed, he was released on a \$5,000 bond and he was notified to return to court for his hearing on August 26, 2014. However, the respondent failed to appear in court as scheduled and the DHS attorney requested an in absentia removal order. That order was entered by the Court.

Subsequently the respondent filed a motion to re-open on March 24, 2014 indicating that the Notice to Appear he received did not list the date and time of his removal proceeding. The respondent alleged that he did not receive the hearing notice. This argument was opposed by the Government attorney. In a decision dated November 24, 2014, the Court could not determine whether or not the respondent was credible concerning his claim about lack of notice. Given the totality of the factors, the Court granted re-opening of the respondent's case and rescheduled him for further hearing.

The respondent returned to court on September 9, 2015. The respondent was represented by the Katz Law Office and a number of attorneys from that firm filed Notices of Appearance on his behalf. At the hearing in September of 2015 the respondent's attorney conceded removability even though the Government attorney had presented evidence concerning the respondent's removability at the in absentia hearing. The respondent's attorney advised the court that the respondent had married a citizen

of the United States and was the father of a United States citizen child. Therefore, a continuance was sought to see whether or not an I-130 petition filed with USCIS would be approved. The Government attorney argued that even if the I-130 was approved, the respondent would have to return to Mexico to apply for an immigrant visa through his wife because of his illegal entry. Therefore, the Court instructed the respondent and his attorney to return to court with an entire criminal history chart, the dispositions of his criminal cases, a Form I-601(a) seeking an unlawful presence waiver, and a State Department Consulate Form DS-230. Respondent admitted that he was incarcerated for almost a year because of a DUI offense.

At the final and continued hearing held on June 1, 2016, the respondent appeared in court with his fourth attorney from the Katz Law Office. Respondent's new attorney indicated that the previous attorney had not left good notes and he was unaware of what the Court had required be done. The respondent admitted that he is still married, that he is hoping that his wife's petition would be approved so that he could apply for a visa at the American Embassy in Mexico.

Counsel for the respondent sought a continuance of the proceedings because he was unprepared to proceed. Thus, this Court has to decide whether it is reasonable for the same law firm to send in four attorneys without being prepared to proceed. In This case, the respondent did not comply with the request made by the Court and I see no reason to grant a further continuance of the respondent's case simply because the respondent's law firm failed to comply with the Court's order.

I would note that the Government suggested that the respondent might not be eligible for an unlawful presence waiver and he would have to depart the United States even if the wife's I-130 was approved. The Court asked that everything be filed with the Court, which was not done. Therefore, I find that it is not reasonable to

continue the respondent's case after he failed to specifically provide the information the Court directed. Under 8 C.F.R. Section 1003.31, when an individual fails to file applications directed by the Court to submit, those applications are deemed abandoned.

The respondent does not really seek pre-conclusion voluntary departure. The respondent's not eligible for voluntary departure at the end of proceedings under Section 240B(b) because of his conviction and incarceration. Therefore, the Court will enter an order of removal.¹

ORDER

IT IS ORDERED that the respondent be deported and removed from the United States to Mexico on the charge contained in the Notice to Appear.

Please see the next page for electronic

signature

ROBERT D. VINIKOOR
Immigration Judge

¹ The respondent can file an appeal from an order of removal arguing that his attorney was ineffective. The respondent also could file a motion to re-open and remand arguing that his attorney was ineffective.

//s//

Immigration Judge ROBERT D. VINIKOOR

vinikoor on August 24, 2016 at 9:36 PM GMT

Immigrant & Refugee Appellate Center, LLC | www.irac.net