



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Charlotte, NC 28212**

Name: PAZ-OCHOA, EVELYN MILDRED

A 206-765-278

Date of this notice: 4/20/2016

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:
Grant, Edward R.

Unscanned

Userteam: Docket

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Falls Church, Virginia 22041

File: A206 765 278 – Charlotte, NC

Date:

In re: EVELYN MILDRED PAZ-OCHOA

APP. 20 2016

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark J. Devine, Esquire

ON BEHALF OF DHS: Lisa P. Durant
Assistant Chief Counsel


The respondent, a native and citizen of Honduras, appeals the Immigration Judge's April 23, 2015, decision ordering the respondent removed from the United States. The Department of Homeland Security (DHS) has filed a motion for summary affirmance of the Immigration Judge's decision. The record will be remanded to the Immigration Judge.¹

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. See 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The Immigration Judge issued a form order in which the respondent was ordered removed to Honduras. On appeal, the respondent argues that her case should have been continued or administratively closed while her two minor children pursue applications for Special Immigration Juvenile Status (SIJS). The respondent references an off-the-record conversation with the Immigration Judge in which a request for a continuance was denied. The DHS, in its response to the motion, acknowledges that a motion to continue was denied, but argues that a continuance is not appropriate. The record does not reflect a request for a continuance or consideration of such a request by the Immigration Judge (Tr. at 4-5). Under the circumstances, where an off-the-record conversation may have occurred in which the Immigration Judge addressed the respondent's request for a continuance, we find remand appropriate for the respondent to present her request on the record and for the Immigration Judge to issue an oral or written decision on the request. See *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). Upon remand, the parties may address whether administrative closure may be appropriate in this case. *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).

¹ Although the Immigration Judge's order indicates that the respondent waived appeal, the record reflects that the Immigration Judge did not inquire whether the respondent wished to waive appeal. As the Notice of Appeal was timely filed, we conclude the appeal is appropriately before us.

ORDER: The record is remanded to the Immigration Judge for preparation of a complete record and issuance of a new decision.



FOR THE BOARD

IMMIGRATION COURT
5701 EXECUTIVE CENTER DR. #400
CHARLOTTE, NC 28212

In the Matter of

PAZ-OCHOA, EVELYN MILDRED
Respondent

Case No.: A206-765-278

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 4.23.15.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☒ The respondent was ordered removed from the United States to HONDURAS or in the alternative to .
- ☒ Respondent's application for voluntary departure was denied and respondent was ordered removed to HONDURAS or in the alternative to .
- ☐ Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to HONDURAS.

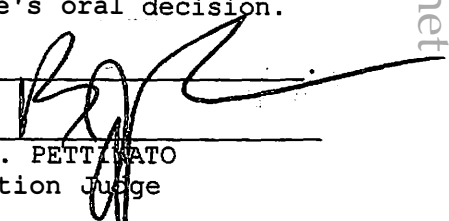
Respondent's application for:

- ☐ Asylum was () granted () denied () withdrawn.
- ☐ Withholding of removal was () granted () denied () withdrawn.
- ☐ A Waiver under Section _____ was () granted () denied () withdrawn.
- ☐ Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☐ Other:

Date: Apr 23, 2015


BARRY J. PETTINATO
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: _____


By Paz