



**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

**Mogil, Michael W.  
Mogil Law Firm  
2 Corpus Christie  
Suite 303  
Hilton Head Island, SC 29928**

**DHS/ICE Office of Chief Counsel - CHL  
5701 Executive Ctr Dr., Ste 300  
Charlotte, NC 28212**

Name: G [REDACTED], A [REDACTED] L [REDACTED]

A [REDACTED]-831

**Date of this notice: 5/24/2017**

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

Userteam: Docket

For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index/](http://www.irac.net/unpublished/index/)

Falls Church, Virginia 22041

---

File: [REDACTED] 831 – Charlotte, NC

Date: MAY 24 2017

In re: A [REDACTED] L [REDACTED] G [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael W. Mogil, Esquire

APPLICATION: Continuance; voluntary departure

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's decision dated May 11, 2016, denying his motion for a continuance. The appeal will be sustained and the record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, 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 respondent moved for a further continuance to file an application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The respondent also sought a continuance to await implementation of an executive order relating to deferred action on the removal of parents of United States citizens. The Immigration Judge issued a summary order denying the motion, referencing 8 C.F.R. § 1003.31(c) (governing when applications for relief may be deemed abandoned for untimely filing), and the Board's decision in *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012) (relating to motions for a continuance based upon a pending U visa petition), presumably for its general guidance on the adjudication of motions to continue.

As an initial matter, the Immigration Judge erred in not preparing a separate decision on the respondent's motion for a continuance. The regulations provide that every decision of an Immigration Judge shall contain the reasons for granting or denying the relief sought. *See* 8 C.F.R. §§ 1003.37, 1240.12. Although there is no formal requirement for the Immigration Judge to list each factual finding, an oral decision must accurately summarize the relevant facts, reflect the Immigration Judge's analysis of the applicable statutes, regulations, and legal precedents, and clearly set forth the Immigration Judge's legal conclusions. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). An explanation of the reasons for the decision in the transcript is insufficient.

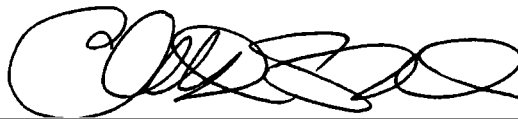
Furthermore, a remand is required in light of the additional evidence that the respondent submitted in support of the application for cancellation of removal. The respondent presented documentation to show that his daughter was scheduled to undergo treatment for "selective mutism" shortly before the final hearing in this matter. Although the condition apparently had begun to manifest itself in the months prior to the hearing, the child's condition is clearly a new and previously unknown circumstance when viewed in the context of these proceedings. Inasmuch as

the child's newly discovered medical condition may be relevant to the level of hardship resulting from the respondent's removal, the Immigration Judge should have found good cause to continue the proceedings and allow the respondent to prepare and submit an application for relief on that basis. See section 240A(b)(1)(D) of the Act (requiring an applicant for cancellation of removal to establish exceptional and extremely unusual hardship to a child or other qualifying relative); 8 C.F.R. §§ 1003.29 and 1240.6; *Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987) (the decision to grant or deny a continuance for good cause is within the sound discretion of the Immigration Judge and will not be overturned on appeal unless it is shown that the respondent was denied a full and fair hearing).

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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



FOR THE BOARD

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

In the Matter of

G [REDACTED], A [REDACTED] I [REDACTED]  
Resp

Case No.: A [REDACTED]-831

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 5/11/16.  
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 MEXICO or in the alternative to .
- [ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to MEXICO or in the alternative to .
- [X] Respondent's application for voluntary departure was granted until 7/11/16 upon posting a bond in the amount of \$ 1,000.00 with an alternate order of removal to MEXICO.

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.

[X] Other: No applications filed per 8 CFR 1003.31(c); motion  
Date: May 11, 2016

to continue DENIED per  
Matter of Sanchez - Sosa.

V. Stuart Couch  
V. STUART COUCH  
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

R

6/10/16