



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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180 Spring Street, Suite 332  
Atlanta, GA 30303

Name: P [REDACTED]-M [REDACTED], W [REDACTED] E [REDACTED] A [REDACTED]-859

Date of this notice: 7/15/2015

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.

User team: Docket

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*As*

Falls Church, Virginia 20530

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File: [REDACTED] 859 – Atlanta, GA

Date: JUL 15 2015

In re: W [REDACTED] E [REDACTED] P [REDACTED] M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jennifer Bensman, Esquire

ON BEHALF OF DHS: Sirce E. Owen  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled (sustained)

APPLICATION: Continuance

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's decision dated January 27, 2015, ordering him removed from the United States to El Salvador. The Department of Homeland Security (DHS) opposes the appeal. The record will be remanded.

At a hearing on January 13, 2015, the 17-year-old respondent indicated through counsel that he intended to seek Special Immigrant Juvenile (SIJ) status. The Immigration Judge instructed the respondent that he would need to provide a copy of the dependency petition filed with the state court and continued proceedings until January 27, 2015.<sup>1</sup> When the hearing reconvened on that date, the respondent did not provide a copy of the petition, but instead provided evidence that a guardianship hearing on the petition was scheduled for March 26, 2015, in the Gwinnett County Juvenile Court. The respondent requested a continuance of 1 week to get guidance from the state court judge regarding whether a copy of the petition could be provided to the Immigration Judge in light of state law regarding the confidentiality of dependency petitions. The record does not reflect whether the DHS opposed a further continuance before the Immigration Judge. The Immigration Judge declined to further continue the proceedings and ultimately ordered the respondent removed to El Salvador.

On appeal, the respondent argues that the Immigration Judge (1) erred in requiring him to produce his juvenile state dependency petition because doing so would violate the Georgia

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<sup>1</sup> A necessary precondition to SIJ status is the declaration of a juvenile court that the respondent is deserving of protection because reunification with her parents was not viable due to abuse, neglect, or abandonment. See section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J).

Juvenile Code and the petition is unnecessary to establish his prima facie eligibility for SIJ status; and (2) abused his discretion by refusing to grant the respondent a continuance to allow him to file for SIJ status.

We find it was error to have denied a continuance in this case where there was no dispute that a dependency petition had been filed in the appropriate state court and a timely hearing scheduled on the petition. As evidenced in this case denial of a brief continuance was not a good utilization of Immigration Court and Board resources. Absent compelling reasons, an Immigration Judge should continue proceedings to await adjudication of a pending state dependency petition in cases such as the one before us.<sup>2</sup> See section 101(a)(27)(J) of the Act; Section 245(h) of the Act, 8 U.S.C. § 1255(h); see also *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 815 (BIA 2012) (stating, “[a]s a general rule, there is a rebuttable presumption that an alien who has filed a prima facie approvable application with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time.”) (internal citation omitted); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) (discussing the standards for administratively closing proceedings); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (setting forth a framework to analyze whether good cause exists to continue proceedings to await adjudication by USCIS of a pending family-based visa petition).

Accordingly, the following order will be entered.

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

  
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FOR THE BOARD

<sup>2</sup> We separately note that guidance provided to Immigration Judges by the Chief Immigration Judge states that if an unaccompanied child is seeking SIJ status, “the case must be administratively closed or reset for that process to occur in state or juvenile court.” See Memorandum from Brian M. O’Leary, Chief Immigration Judge, to Immigration Judges (March 24, 2015) (Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of New Priorities).

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ATLANTA, GEORGIA

File: A [REDACTED] 859

January 27, 2015

In the Matter of

W [REDACTED] E [REDACTED] P [REDACTED] M [REDACTED]	)	
	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	
	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act

APPLICATION: Motion for continuance

ON BEHALF OF RESPONDENT: Hannah MacNorlin  
PO Box 450469  
Atlanta, Georgia 33145

ON BEHALF OF DHS: Darcy Owen  
Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

This case came before the court as a result of the Notice to Appear that was issued by the Department of Homeland Security. The charging document alleges the respondent is a native and citizen of El Salvador and that he is removable from the United States pursuant to Section 212 of the Immigration and Nationality act. The respondent admits the factual allegations in the Notice to Appear. The court finds by clear and convincing evidence that the respondent is removable as charged.

The respondent appeared in court back on January 13th. The case was set for today. At the conclusion of the hearing, the respondent indicated that he would attempt to get dependency order and will refer the matter to pro bono. The court advised the respondent through counsel that further continuation of today's hearing would be granted only if he were to submit a petition for dependency to show that the document was actually filed in the state court. The court needs this information in order to determine whether the respondent has a prima facie case for relief. The court further addressed a concern that the respondent has concerning any possible confidentiality issue. The court notes that most attorneys with very few exceptions turn over the petition that is requested by the court. The court understands that the government typically requires a copy of this petition in order to terminate proceedings later. The document is routinely turned over to the government. The respondent was advised that if he believed there were confidentiality issues he was to submit a motion or brief in support of his position at least one week prior to the hearing. The respondent did not comply with the court's request. He came today without providing any evidence of a dependency petition. Moreover, the court gave the respondent the opportunity to brief this matter before coming to court today and simply refusing to comply with the court's order. The respondent has not demonstrated that there is good cause for further continuance. He has not complied with the court's request of providing a copy of the dependency petition. He has not shown that there is a prima facie case for relief. The court will enter the following order:

ORDER

IT IS HEREBY ORDERED the respondent be removed from the United

States based on the charge set forth in the Notice to Appear and that he be deported to El Salvador.

**Please see the next page for electronic**

**signature**

EARLE B WILSON  
Immigration Judge

//s//

Immigration Judge EARLE B WILSON

wilsone on March 19, 2015 at 11:35 AM GMT

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)