U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: KIM, JIHYUN

A 089-245-712

Date of this notice: 12/15/2014

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:
Hoffman, Sharon

Userteam: Docket

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File: A089 245 712 – Honolulu, HI

Date: DEC 15 2014

In re: JIHYUN KIM

IN REMOVAL PROCEEDINGS

APPEAL
ON BEHALF OF RESPONDENT: James A. Stanton, Esquire

ON BEHALF OF DHS: Chandu Latey
Assistant Chief Counsel

APPLICATION: Continuance

The respondent, a native and citizen of Korea, appeals the decision of the Immigration Judge, dated February 20, 2013, denying her request for a continuance of these removal proceedings pending adjudication of this Board of an appeal of a decision denying a Petition for Alien Relative (Form I-130) which her husband filed on her behalf. *See generally Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009). The Department of Homeland Security is opposed to the respondent's appeal.

Even though the respondent's husband apparently filed his appeal with United States Citizenship and Immigration Services ("USCIS") in August 2012, to date, USCIS has not forwarded the record of visa petition proceedings to this Board for consideration of his appeal. Considering the totality of the circumstances presented in this case, including that the visa petition appeal has now been pending for more than 2 years, we conclude that it is appropriate to administratively close these removal proceedings pending receipt of the record of visa petition proceedings. *See Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).

Accordingly, the following order will be entered.

ORDER: The proceedings before the Board of Immigration Appeals in this case are administratively closed.[1]

FOR THE BOARD

[1] If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HONOLULU, HAWAII

File: A089-245-712 February 20, 2013

In the Matter of

JIHYUN KIM	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Section 237(a)(1)(B) of the Immigration and Nationality Act.

APPLICATIONS: Voluntary departure.

ON BEHALF OF RESPONDENT: JAMES A. STANTON

ON BEHALF OF DHS: CHANDANI LATEY

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a married female who is a native and citizen of Korea, born on May 6, 1957. The Department of Homeland Security placed the respondent in removal proceedings upon filing a Notice to Appear with the Honolulu Immigration Court. This Notice to Appear was filed on January 18, 2011. The Notice to Appear alleges that the respondent is not a citizen or national of the United States and that she is a native of South Korea and a citizen of South Korea. The Notice to Appear further alleges that the respondent was admitted to the United States at Honolulu, Hawaii on or about April 8, 2007 as a non-immigrant B2 visitor with authorization to remain in the

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United States for a temporary period not to exceed six months. The Notice to Appear further alleges that the respondent remained in the United States beyond six months without authorization from the Immigration and Naturalization Service or its successor, the Department of Homeland Security. The respondent appeared in proceedings represented by counsel. The respondent admitted factual allegations one, two, three, and four, and conceded the charge of removal under Section 237(a)(1)(B) of the Immigration and Nationality Act in that after admission as a non-immigrant under Section 101(a)(15) of the Act, the respondent had remained in the United States for a time longer than permitted in violation of this Act or any other law of the United States. The Court finds that the Department of Homeland Security has satisfied their burden of establishing that the respondent is removable from the United States by clear and convincing evidence. The Court rendered a decision finding the respondent to be removable previously. The respondent appealed the Court's decision. The Board of Immigration Appeals remanded the respondent's case to this Court so that the matter be held in abeyance pending the adjudication of a petition for an alien relative I-130 filed on the respondent's behalf by her United States citizen spouse, a man she married during the pendency of the appeal. The Board cited that the Court, under the Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009), "a motion to continue ongoing removal proceedings to await the adjudication of a pending family based visa petition should generally be granted if approval of the visa petition would render the alien prima facially eligible for adjustment of status."

The respondent previously did not have a pending appeal or petition with the Department of Homeland Security. The respondent was not married at the time the Court rendered its previous decision. The Court considers the respondent's request today, a request for a continuance, and denies the respondent's request for a

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continuance. The Court has considered the reasons behind the requested continuance, and that is that the respondent is appealing the denial of the I-130 in that the I-130 is not a final adjudication by the Department of Homeland Security until such time as the appeal has been ruled on. The respondent requests a continuance for a period of four months to allow for the adjudication or the determination of the appeal. The Court would find that the respondent does not have any pending applications before this Court as the I-130 has been denied by the Department of Homeland Security. As such, a continuance in this matter would not be appropriate. As such, the Court denies the respondent's request for a continuance. The Court considered the record in its entirety. Exhibit 1, the Notice to Appear. Exhibit 2, the Department of Homeland Security's evidence and the documents submitted in association with the respondent's appeal. The respondent submitted an additional document today entitled Respondent's First Hearing Exhibits, in which the respondent identifies that the I-130 is being appealed. The Court upon evaluating the record in its entirety would find that the respondent does not have any pending applications before this Court and that the Court is left with no other alternative as the respondent does not have any pending applications before this Court but to issue a decision in this matter.

The respondent has requested voluntary departure. The Court would find that the respondent is statutorily ineligible for pre-conclusion voluntary departure, but that she is statutorily eligible for post-conclusion voluntary departure. The Court grants the respondent's request for post-conclusion voluntary departure as a matter of discretion. The Court will order that the respondent depart the United States no later than March 22, 2013 upon posting a minimum bond amount of $500 dollars with the Department of Homeland Security no later than February 26, 2013.

ORDER

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IT IS ORDERED that the respondent be granted voluntary departure, departing the United States no later than March 22, 2013 upon posting a bond in the amount of $500 dollars no later than February 26, 2013.

Please see the next page for electronic signature

CLARENCE M. WAGNER
Immigration Judge

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//s//

Immigration Judge CLARENCE M. WAGNER

wagnerc on May 15, 2013 at 1:38 AM GMT

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