



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - HON
595 Ala Moana Boulevard
Honolulu, HI 96813-4999**

Name: MOSES, BERNARTITA

A 206-352-760

Date of this notice: 12/9/2014

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:
Miller, Neil P.

Userteam: Docket

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**MOSES, BERNARTITA
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PO BOX 30080
HONOLULU, HI 96820**

**DHS/ICE Office of Chief Counsel - HON
595 Ala Moana Boulevard
Honolulu, HI 96813-4999**

Name: MOSES, BERNARTITA

A 206-352-760

Date of this notice: 12/9/2014

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

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Panel Members:
Miller, Neil P.

Userteam:

Immigrant & Refugee Appellate Center | www.irac.net



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**MOSES, BERNARTITA
04238-122/A206-352-760
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**DHS/ICE Office of Chief Counsel - HON
595 Ala Moana Boulevard
Honolulu, HI 96813-4999**

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A 206-352-760

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Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Miller, Neil P.

Userteam:

Falls Church, Virginia 20530

File: A206 352 760 – Honolulu, HI

Date: DEC - 9 2014

In re: BERNARTITA MOSES a.k.a. Bernartita Moses a.k.a. Bernartita Mariano Moses

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Emmanuel G. Guerrero, Esquire

ON BEHALF OF DHS: Hieth M. Kaneshige
Assistant Chief Counsel

The respondent, through counsel, filed a timely appeal of an Immigration Judge's decision finding her subject to removal as charged by the Department of Homeland Security ("DHS") and ordering her removal from the United States.¹ In response to the respondent's appeal, DHS urges the Board to affirm the Immigration Judge's decision. The appeal will be sustained and the record will be remanded to the Immigration Judge for further proceedings.

On appeal, the respondent asserts that she was denied a fair hearing. In support of her argument, the respondent, in essence, asserts that the Immigration Judge erred by not granting her recently retained attorney a continuance in order to fully review her case and represent her before the court. The respondent also, in essence, asserts that the Immigration Judge failed to fully explain how he reached the conclusion that the allegation (e.g., conviction of theft in the second degree) supported the charge that she had been convicted of a crime involving moral turpitude.

We agree with the respondent that the Immigration Judge erred in not continuing proceedings to allow her attorney a meaningful opportunity to review and present her case before the court. The record indicates that the respondent, before she obtained counsel, experienced difficulties understanding the proceedings as well as the court provided interpreter. The Immigration Judge, in his decision, acknowledges that her counsel was retained at the last minute. While we appreciate an Immigration Judge's desire to keep a detained docket moving efficiently, it is also essential that Immigration Judges be mindful of a respondent's invocation of procedural rights and privileges. *See Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012). We find that the respondent presented good cause for a continuance.

In addition, we agree with the respondent that the Immigration Judge did not meaningfully explain his reasons for finding that the conviction records submitted by DHS supported the charge of removability (I.J. at 4; Tr. at 37-38). Since the Immigration Judge did not fully explain

¹ The respondent's request to waive the appellate filing fee is granted.

why the conviction constituted a crime of moral turpitude, the respondent was deprived an opportunity to contest such determination on appeal.

Accordingly, the respondent's appeal will be sustained, and the record will be remanded for further proceedings, and the entry of a new decision.



FOR THE BOARD

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

File: A206-352-760

September 18, 2014

In the Matter of

BERNARTITA MOSES

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(2)(A)(i) of the Immigration and Nationality Act and
237(a)(2)(A)(iii) of the Immigration and Nationality Act.

APPLICATIONS:

ON BEHALF OF RESPONDENT: EMMANUEL GUERRERO, Esquire

ON BEHALF OF DHS: HEITH KANESHIGE, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 59-year-old female who is a native and citizen of the Federated States of Micronesia. The Department of Homeland Security initiated removal proceedings pursuant to their authority under the Immigration and Nationality Act upon filing the Notice to Appear with the Honolulu Immigration Court August 26, 2014. The Notice to Appear alleged that the respondent is not a citizen or national of the United States and that the respondent is a native of the Federated States of Micronesia and a citizen of the Federated States of Micronesia. The Notice to Appear

further alleged that the respondent was admitted to the United States at Guam on or about August 13, 2001, as a nonimmigrant under the Compact of Free Association with the Federated States of Micronesia. The Notice to Appear also alleged that the respondent, on April 8, 2008, was convicted in the State of Hawaii Circuit Court of the First Circuit at Honolulu, Hawaii, for the offense of theft in the second degree committed on or about April 1, 2003, through September 30, 2004, in violation of Section 708-8302 and 708-8311-B of the Hawaii Revised Statutes. The Notice to Appear further alleged that for that offense a sentence of one year or longer may be imposed.

The respondent appeared initially at a Master Calendar hearing on September 2, 2014. The respondent indicated that she speaks Trukese. The Court utilized a Trukese interpreter. The Court was requested to allow the respondent an opportunity to have her own interpreter interpret for her so that she would understand the proceedings. The respondent proceeded to ask substantive questions through the interpreter certified to translate from English to Trukese and Trukese to English. The Court made a determination that because of the substantive questions that the respondent was asking that proceeding with the certified interpreter would be appropriate in the respondent's case. The respondent was advised of her rights in these proceedings. The Court advised her of her rights over a period of a half an hour, stopping multiple times to ensure that the respondent understood what was taking place. The respondent was informed that her hearing would be reset to September 16, 2014, at 8:30 a.m. and that the Court would permit the individual that she identified as the interpreter that she wished to use to provide interpretation in conjunction with the certified interpreter.

The respondent did not have the individual identified appear at her hearing on September 16, 2014, at 8:30 a.m. The respondent requested that the Court call this individual. The Court did not allow for a telephonic connection with this interpreter, but

instead allowed the respondent additional time to have the individual appear in the Honolulu Immigration Court. The Court made a determination that it would be too complicated or unnecessarily complicated in order to conduct a hearing with an individual that the Court has no information on relating to their qualifications to interpret, let alone telephonically, to interpret on the respondent's behalf in conjunction with the interpreter that is certified to translate from English to Trukese and Trukese to English. The respondent had multiple family members in Court and the Court was very clear about what would take place in today's proceedings. That this matter would proceed today and that the Court would give the respondent an additional opportunity to have her interpreter present and also to have counsel present.

In today's proceedings, September 18, 2014, the respondent appears and the respondent has counsel present. Counsel for the respondent informed the Court that he had had an opportunity to meet with his client for a very brief period of time and had not had the benefit of an interpreter during the meeting or interaction with this client and also that the respondent did not bring her documents to the meeting area in which the respondent was permitted to meet with her attorney. The respondent's counsel informed the Court that he again had limited opportunities to communicate with his client. Respondent's counsel assumes the case in the posture that it was in. Respondent's counsel did not review the Court's records. There is no information in the Court's record reflecting that the record was reviewed by respondent's counsel and respondent's counsel has not taken efforts to pursue under due diligence a review of the Record of Proceedings in this matter.

Respondent's counsel essentially was articulating circumstances which would raise issues of a continuance, which a continuance the respondent's counsel was informed would not take place today as the respondent had been substantially informed

that these proceedings would take place today. It is unfortunate that respondent's counsel did not review the record. It is unfortunate that respondent's counsel was retained last minute. It is unfortunate that respondent did not pursue more vigorously the opportunity to communicate with counsel and to convey and provide the necessary documents to respondent's counsel. However, in reviewing the case, the Court has had the opportunity over weeks to review the documents that have been submitted as a matter of record, the Department of Homeland Security's evidence having been submitted at the first Master Calendar hearing, of which the respondent had an opportunity to locate an attorney or to have an interpreter appear, of which the respondent did not proceed with locating an attorney or having the interpreter that she articulated would be necessary in order to assist her with understanding these proceedings.

The Court at this time on today's hearing conducted substantial inquiry of the respondent to determine what relief from removal, if any, the respondent would be eligible for.

The Court found that the Department of Homeland Security had submitted conviction documents to support the charge of removal under Section 237(a)(2)(A)(i) of the Immigration and Nationality Act and, as such, sustained factual allegation 4 contained in the Notice to Appear and also sustained the charge of removal under Section 237(a)(2)(A)(i) of the Immigration and Nationality Act.

The Court inquired of the respondent whether or not she would have any fear of returning to her country if removal became necessary. The respondent articulated that she has no family remaining in the Federated States of Micronesia and that she is taking care of a disabled child that needs her care and that the respondent herself is ill. The respondent did not articulate any basis which would support eligibility or

consideration of asylum, withholding of removal or protection under the Convention against Torture.

The Court inquired of the respondent to her marital status. The respondent is not married to a United States citizen or legal permanent resident of the United States. The respondent's parents are not United States citizens or legal permanent residents of the United States. The respondent has ten children identified in the record. The respondent has a 17-year-old child who is a United States citizen. The respondent's other children are not United States citizens and, therefore, are unable to file petitions on the respondent's behalf allowing her to remain in the United States. The respondent's youngest child is not of the age to file a petition allowing for the respondent to remain in the United States.

The Court evaluated the respondent's case, inquired of respondent's counsel whether or not he was able to identify any relief from removal that the respondent would be eligible for. Respondent's counsel was unable to articulate any relief from removal that the respondent would be eligible for. The Court acknowledges that respondent's counsel did not have substantial time to review the case to make an informed decision based upon research. The Department of Homeland Security was inquired whether or not the Department of Homeland Security was aware of any relief from removal that the respondent would be eligible for. The Department of Homeland Security was unable to identify any relief from removal that the respondent would be eligible for. The Court, upon making an independent and separate evaluation finds that the respondent would not be eligible for any relief from removal at this time.

The Court, in evaluating the second charge of removal in the respondent's case under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, the Court did not make a finding as it relates to the aggravated felony offense. The Court in evaluating

the respondent's eligibility for voluntary departure would find that the respondent would be eligible for voluntary departure as the Court has not made a finding of the aggravated felony offense. However, the Court, in considering voluntary departure for the respondent would deny the respondent's request for voluntary departure as a matter of discretion based upon the seriousness of the offense in which the respondent has been convicted.

The Court at this time would issue the following order:

ORDERS

IT IS ORDERED that the respondent's request for voluntary departure be denied.

IT IS ORDERED that the respondent be ordered removed from the United States.

The respondent has indicated her desire to appeal the Court's decision. The Department of Homeland Security has indicated their desire to waive appeal in this matter.

CLARENCE M. WAGNER, JR.
Immigration Judge

CERTIFICATE PAGE

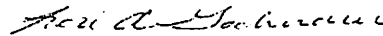
I hereby certify that the attached proceeding before JUDGE CLARENCE M.
WAGNER, in the matter of:

BERNARTITA MOSES

A206-352-760

HONOLULU, HAWAII

was held as herein appears, and that this is the original transcript thereof for the file of
the Executive Office for Immigration Review.



LORI A. GOCHNOUR (Transcriber)

FREE STATE REPORTING, Inc.-2

OCTOBER 24, 2014

(Completion Date)