U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Falls Church, Virginia 22041

[redacted]

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

Name: E[redacted] D[redacted], M[redacted] ... **A[redacted]-856**
Riders:[redacted]

Date of this notice: 11/6/2018

Enclosed is a copy of the Board's decision in the above-referenced case. 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 this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Geller, Joan B
Adkins-Blanch, Charles K.
Kelly, Edward F.

Userteam: Docket

Files: [redacted]-856 – Charlotte, NC

Date: NOV - 6 2018

In re: M[redacted] R[redacted] E[redacted] D[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Pro se

APPLICATION: Asylum

The respondents appeal from the Immigration Judge's June 19, 2017, decision finding that the lead respondent abandoned her application for asylum, and ordering the respondents removed to El Salvador.[1] The Department of Homeland Security ("DHS") did not respond to the appeal. The appeal will be sustained, and the record will be remanded for further proceedings and the entry of a new decision.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

At the group master calendar hearing held on March 1, 2017, the Immigration Judge provided the respondent with a Form I-589 application for relief, advised the respondent that her application must be filed by the next hearing on June 19, 2017, and gave her a scheduling order that instructed her on how to apply for relief. The scheduling order contained a warning that if the application and supporting documents were not filed as directed by the next scheduled hearing, the respondent's opportunity to file for asylum or withholding of removal would be waived (IJ at 1-2; Tr. at 6, 11-12; Scheduling Order Governing Asylum Applications Before the [Immigration Judge] (Scheduling Order)). On June 19, 2017, the respondent appeared in Immigration Court, stated that she feared returning to El Salvador, and indicated that she had not yet prepared her asylum application for filing in Court (Tr. at 20). The respondent testified that she did not fill out the application because it is in English and she did not understand it (*Id.*). She indicated that she sought the assistance of three different attorneys but they did not want to help her (*Id.*). The Immigration Judge inquired as to whether the DHS opposed a continuance in this case. The DHS

[1] The respondents are a mother and her minor children. The mother is the lead respondent. Her children are derivative applicants on her application for asylum. References to the singular respondent refer to the lead respondent.

did not oppose a short continuance. However, the DHS acknowledged that "when you issue a scheduling order and they [do not] meet it, you have every right to proceed and not to continue the case" (*Id.*). The Immigration Judge did not find "good cause for a continuance of these proceedings," deemed the respondent's application for asylum abandoned, and ordered her removed from the United States (IJ at 2).

An Immigration Judge may "set and extend time limits for the filing of applications and," when applications are not filed within those time limits, the opportunity to file them "shall be deemed waived." 8 C.F.R. § 1003.31(c). The Board has long held that applications for benefits under the Act are properly denied as abandoned when the alien fails to file them in a timely manner after having been provided a fair opportunity to do so. *See Matter of R-R-*, 20 I&N Dec. 547, 549 (BIA 1992); *Matter of Jean*, 17 I&N Dec. 100, 102 (BIA 1979).

Here, however, we consider that the respondent testified that despite her good faith efforts, three attorneys declined to assist her, the DHS had already agreed to a short continuance, and no prior continuance had been granted. *Matter of L-A-B-R-*, 27 I&N Dec. 405, 413 (A.G. 2018); 8 C.F.R. § 1003.29. Under the circumstances presented, we conclude there was good cause for a continuance. *Matter of Perez-Andrade*, 19 I&N Dec. 433, 434 (BIA 1987). We will remand the record to the Immigration Judge to provide the respondent an opportunity to submit her asylum application. We caution the respondent that delay in filing any application for relief may result in a finding that relief has been abandoned.

Accordingly the following orders will be entered.

ORDER: The appeal is sustained.

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

FOR THE BOARD