



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 20530

**MUTUKWA, MICHAEL
A099-395-254
SDC
P.O. BOX 248
LUMPKIN, GA 31815**

**DHS/ICE Office of Chief Counsel - SDC
146 CCA Road
Lumpkin, GA 31815**

Name: MUTUKWA, MICHAEL

A 099-395-254

Date of this notice: 10/25/2013

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:
Adkins-Blanch, Charles K.

schuckec
Userteam: Docket

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Falls Church, Virginia 20530

File: A099 395 254 – Lumpkin, GA

Date: **OCT. 25 2013**

In re: MICHAEL MUTUKWA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

The respondent, a native and citizen of Zambia, appeals the decision of the Immigration Judge, dated May 15, 2013, ordering his removal from the United States.¹ The record will be remanded.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3).

Considering the totality of the circumstances presented in this case, we conclude that it is appropriate to remand the record to the Immigration Judge in order to provide the respondent with a renewed opportunity to apply for relief from removal and to seek a continuance.² See section 240(c)(4)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d); see also 8 C.F.R. §§ 1003.29, 1240.6. While an Immigration Judge must not take on the role of advocate for an alien, it is appropriate for Immigration Judges to aid in the development of the record, particularly where an alien appears pro se and may be unschooled in the removal process. *Matter of J-F-F-*, 23 I&N Dec. 912, 922 (BIA 2006); see also 8 C.F.R. § 1240.11(a)(2). In the present case, when the respondent, who wishes to file for nonimmigrant status under section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), informed the Immigration Judge that he had "put together documents and the only thing that was left was a certificate" (Tr. at 45), the Immigration Judge did not solicit a copy of these documents or otherwise attempt to discern the nature of the documents that the respondent had obtained. As such, the record was not sufficiently developed for the Immigration Judge to properly resolve the issue of whether these proceedings should be continued to allow for the respondent to pursue a claim to U nonimmigrant status before United States Citizenship and Immigration Services. *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012); see also *Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) ("The Board is an appellate body whose function is to review, not to create, a record.").

¹ As removal proceedings are separate and apart from bond proceedings, we lack jurisdiction to consider issues concerning the respondent's custody status in the instant removal proceedings. See 8 C.F.R. § 1003.19(d).

² On appeal, the respondent concedes that he is subject to removal from the United States because, after being admitted to this country as a nonimmigrant student in 2005, he did not comply with the terms of his admission (Respondent's Br. at 10; Tr. at 37-38; Exh. 1). See section 237(a)(1)(B) of the Act, 8 U.S.C. § 1227(a)(1)(B).

Additionally, the lack of a separate oral or written decision is an independent basis to remand the record. *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). The summary order issued by the Immigration Judge does not contain any meaningful factual findings or legal conclusions. “[A]liens facing removal from this country, this Board, and reviewing federal circuit courts of appeals should not be required to pore through the transcript of proceedings to find the Immigration Judge's decision.” *Matter of A-P-*, 22 I&N Dec. 468, 476 (BIA 1999).

As the present record was not sufficiently developed before the Immigration Judge and the Immigration Judge did not issue a separate oral or written decision setting forth the reasons for his decision, we express no opinion regarding the ultimate outcome of these removal proceedings or the other issues raised on appeal at the present time. See *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). The following order is entered.

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

A handwritten signature in black ink, appearing to read 'Michael Mutukwa', is written over a horizontal line.

FOR THE BOARD

IMMIGRATION COURT
146 CCA ROAD
LUMPKIN, GA 31815

In the Matter of

Case No.: A099-395-254

MUTUKWA, MICHAEL
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 5/15/13
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 Zambia
~~or in the alternative to.~~
[] Respondent's application for voluntary departure was denied and
respondent was ordered removed to or in the
alternative to .
[] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of \$ _____
with an alternate order of removal to .

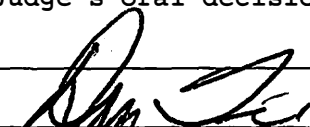
Respondent's application for:

- [] 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.
[] Other: _____

Date: May 15, 2013


DAN TRIMBLE
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: 14 June 2013