U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: CASTILLO, ARTURO JOAN

A 099-240-709

Date of this notice: 1/15/2020

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:
Liebowitz, Ellen C
Cassidy, William A.
Hunsucker, Keith

Userteam: Docket

File: A099-240-709 – Miami, FL Date: **JAN 15 2020**

In re: Joan Arturo CASTILLO a.k.a. Joan Arturo Castillo Montiel

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Martha Liliana Arias, Esquire

ON BEHALF OF DHS: Amanda J. Brown
Assistant Chief Counsel

APPLICATION: Reconsideration; reopening

The respondent appeals the Immigration Judge's decision dated February 28, 2018, denying his motion to reconsider and reopen his proceedings. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

In denying the motion, the Immigration Judge used a form order which did not adequately identify the reasons for denying the respondent's motion. The Immigration Judge noted on the form order the following: "See Order of January 16, 2018, no new law or fact warrant [reconsideration]." Without adequate explanation of the reasons for the Immigration Judge's decision, the Board is not meaningfully able to review the appeal. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (holding that when a motion to reopen proceedings is denied, the Immigration Judge must identify and fully explain the reasons for such decision); *see also Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). Specifically, after reviewing the Immigration Judge's January 16, 2018, order, and the respondent's motion, we are unable to adjudicate the respondent's appeal.

Further, after reviewing the audio recording of the last hearing, it appears that a "call-up" date was scheduled for May 15, 2017, to submit a brief addressing the respondent's eligibility for relief under section 237(a)(1)(H) of the Immigration and Nationlity Act, 8 U.S.C. § 1227(a)(1)(H). There is no specific form to be filed or filing fee for a section 237(a)(1)(H) waiver, and thus, it is not clear which application for relief the Immigration Judge was referring to as missing from the record in his January 16, 2018, decision.

In addition, on the May 15, 2017, call-up date, the respondent's counsel at the time, Ms. Melisa Pena, filed a motion to withdraw as attorney of record, but did not file the promised brief (May 15, 2017, "Motion to Withdraw as Attorney of Record"). In her motion, Ms. Pena did not accurately explain that the call-up date was for filing her brief on behalf of the respondent; instead,

she stated that the respondent was not cooperating or providing necessary documentation for his defense, and they had "irreconcilable differences" (*Id.*).

In addition, it is not clear if the Immigration Judge was also considering the respondent's applications for relief as abandoned due to failure to comply with biometrics requirements (Jan. 16, 2018, IJ at unnumbered 1-2). *See* 8 C.F.R. §§ 1003.47(a)-(d). However, if that is the case, then the Immigration Judge should include in his decision factual findings to show that the procedural requirements for making such a finding were complied with. *See Matter of D-M-C-P-*, 26 I&N Dec. 644, 649 (BIA 2015).

The record will be returned to the Immigration Judge for preparation of a full decision containing the necessary findings of facts and conclusions of law in adjudicating the respondent's motion.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further action as required above.

FOR THE BOARD