



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**Name: LOPEZ-PEREZ, ZAYURI
Riders: 206-678-765 206-678-766 206-678-767**

A 206-678-764

Date of this notice: 4/27/2016

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:
O'Leary, Brian M.
Grant, Edward R.
Mann, Ana

FILED

Userteam: Docket

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Falls Church, Virginia 22041

Files: A206 678 764 – San Diego, CA
A206 678 765
A206 678 766
A206 678 767

Date: APR 27 2016

In re: ZAYURI LOPEZ-PEREZ
ITZI YANELY VALDOVINOS-LOPEZ
ISIS MARIELA VALDOVINOS-LOPEZ
SAMUEL EFRAIN VALDOVINOS-LOPEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Esther Valdes, Esquire

ON BEHALF OF DHS: Kathryn Stuever
Senior Attorney

APPLICATION: Termination of proceedings

In a decision dated December 16, 2015, the Immigration Judge terminated the removal proceedings against the respondents.¹ The Department of Homeland Security (DHS) has appealed from that decision. The DHS's appeal will be sustained, the proceedings will be reinstated, and the record will be remanded to the Immigration Judge.

The DHS initiated removal proceedings under section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a, by filing a Notice to Appear (Form I-862) with the Immigration Court. The Notice to Appear alleged that the respondents, who are natives and citizens of Mexico, applied for admission to the United States on or about June 30, 2014. The DHS charged that the respondents are removable pursuant to section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), as immigrants without valid entry documents. The Immigration Judge sustained that charge of removability against the respondents.

Pursuant to a motion to terminate proceedings filed by the respondents, the Immigration Judge terminated removal proceedings. Before the Immigration Judge and on appeal, the respondents have argued that section 235(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1225(b)(1)(A)(ii),²

¹ The respondents are an adult female and her three minor children.

² Section 235(b)(1)(A)(ii) of the Act provides, in pertinent part: "If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States . . . is inadmissible under section 212(a)(6)(C) or 212(a)(7) and the alien indicates (continued...)"

and the regulations at 8 C.F.R. § 208.30 and 8 C.F.R. § 235.3 require the DHS to refer arriving aliens who express a fear of persecution to an asylum officer for a credible fear interview rather than placing them in expedited removal proceedings. The respondents argue that termination of proceedings was appropriate because the DHS did not oppose the motion to terminate, because the Immigration Judge can terminate if there is a regulatory violation, and because the respondents were materially prejudiced by being placed in removal proceedings rather than being referred for a credible fear interview.

On appeal, the DHS argues that the Immigration Judge erred in terminating the proceedings. The DHS argues that the Immigration Judge terminated proceedings before the deadline for the DHS to respond to the motion. The DHS also argues that there was no basis to terminate proceedings because the Immigration Judge had sustained the grounds of removal and because the DHS indicated that it wanted to prosecute the case as an enforcement priority. The DHS had already denied the respondents prosecutorial discretion. Finally, the DHS argues that the Immigration Judge cannot review the DHS's exercise of discretion in deciding whether to refer the respondents for a credible fear interview or to place them in removal proceedings.

We are persuaded by the arguments made by the DHS. With regard to the issue of authority to refer the respondents for a credible fear interview or to place them in removal proceedings, this Board has found that, based on the prosecutorial discretion given to the DHS and the statutory scheme of the Act, it is permissible for the DHS to file a Notice to Appear commencing removal proceedings, pursuant to section 240 of the Act, against an alien who is an arriving alien who expresses a fear of persecution. *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011). It is within the prosecutorial discretion of the DHS to place an arriving alien who expresses a fear of persecution into removal proceedings, pursuant to section 240 of the Act, without first referring that alien to an asylum officer for a credible fear interview. *See Matter of E-R-M- & L-R-M-*, *supra*. Consequently, we find no regulatory violation. Moreover, we find no prejudice to the respondents here. By being placed in removal proceedings, the respondents have the same opportunity for a full asylum hearing heard de novo by the Immigration Judge as aliens referred to an Immigration Judge by an asylum officer. Because we find that the DHS was within its prosecutorial discretion in placing the respondents in removal proceedings, pursuant to section 240 of the Act, without first referring them to an asylum officer for a credible fear interview, we will sustain the appeal, reinstate removal proceedings, and remand the record to the Immigration Judge.

Accordingly, the following orders will be entered.

ORDER: The appeal of the Department of Homeland Security is sustained, the decision of the Immigration Judge is vacated, and the removal proceedings against the respondents are reinstated.

(...continued)

either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).”

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


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
San Diego, California

In the Matter of:

LOPEZ PEREZ, ZAYURI, A 206 678 764
VALDOVINOS-LOPEZ, ITZI, A 206 678 765
VALDOVINOS-LOPEZ, ISIS, A 206 678 766
VALDOVINOS-LOPEZ, SAMUEL, A 206 678 767

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's Motion to Terminate, it is HEREBY ORDERED
that the Motion be

☒ GRANTED ~~___ DENIED~~ because:

- ☒ DHS does not oppose the motion. *See ICPM ch. 5.13.*
~~___~~ The Respondent does not oppose the motion.
~~___~~ A response to the motion has not been filed with the court.
~~___~~ Good cause has been established for the motion.
~~___~~ The court agrees with the reasons stated in opposition to the motion.
~~___~~ The motion is untimely per _____.
~~___~~ Other:

these cases are terminated without prejudice. so ORDERED.

December 16, 2015
Date

[Signature]
Immigration Judge *Philip B. Daw*

Certificate of Service

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Alien's Atty/Rep

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DHS

Date: *12/17/15*

By: Court Staff: *[Signature]*