



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 22041

**Prabhu, Aaron
Gonzalez Olivieri LLC
2200 Southwest Fwy.
Ste. 550
Houston, TX 77036**

**DHS/ICE Office of Chief Counsel - HOU
126 Northpoint Drive,
Suite 2020
Houston, TX 77060**

Name: P [REDACTED] C [REDACTED], D [REDACTED] A [REDACTED]-583
Riders: [REDACTED]

Date of this notice: 2/27/2020

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:
Mann, Ana
Kelly, Edward F.
Adkins-Blanch, Charles K.

User team: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

RC

Falls Church, Virginia 22041

Files: [REDACTED]-583 – Houston, TX

Date: FEB 27 2020

In re: D [REDACTED] P [REDACTED] C [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Aaron Prabhu, Esquire

ON BEHALF OF DHS: Gabriel A. Couriel
Assistant Chief Counsel

APPLICATION: Reopening

The respondents, a mother and children who are natives and citizens of Mexico, have appealed from the Immigration Judge's decision dated May 13, 2019, that denied their motion to reopen proceedings. The appeal will be sustained and the record remanded for further proceedings.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under a clearly erroneous standard, and all other issues de novo. See 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The Immigration Judge treated the lead respondent's (hereinafter "the respondent") applications for relief as abandoned for failure to comply with the corresponding biometrics security requirements. The respondent then filed a timely motion to reopen the proceedings based upon a claim of ineffective assistance of counsel. The Immigration Judge denied the motion because the respondent failed to submit evidence that she had filed a complaint against prior counsel with appropriate disciplinary authorities, as required in the Board's precedent decision in *Matter of Lozada*, 19 I&N Dec. 399 (BIA 1991) (IJ at 3).

The applicable regulations outline procedures for an Immigration Judge and the Department of Homeland Security (DHS) to follow when informing an alien respondent in removal proceedings about the necessity of completing the biometrics requirement in connection with applications for relief, and those procedures include providing the respondent with a warning that failure to comply with the requirements shall constitute abandonment of the applications for relief. See 8 C.F.R. §§ 1003.47(c) and (d). The DHS must provide the alien with instructions for meeting those requirements. Upon receipt of the biometrics notice and instructions, the Immigration Judge

must ensure on the record that: (1) the DHS met its obligations to inform the alien of the biometrics requirements and furnish appropriate instructions; (2) the alien is informed of the deadline for complying with the biometrics requirement; and (3) the alien is informed of the consequences of failing to comply with the biometrics requirement, including the possibility that the applications for relief will be deemed abandoned unless good cause is shown for the failure to comply. See *Matter of D-M-C-P-*, 26 I&N Dec. 644, 649-50 (BIA 2015)

There is no documentation in the record to show that the Immigration Judge complied with the requirements of 8 C.F.R. §§ 1003.47(c) and (d). A review of the digital audio recording of the proceedings reveals that the Immigration Judge did not set a firm deadline for submitting biometrics materials, but rather said that they should be filed as soon as possible, and that all other documents should be submitted two weeks before the hearing. Further, the Immigration Judge did not advise the respondents that failure to comply with the biometrics deadline would result in their applications for relief being deemed abandoned.

We conclude that the Immigration Judge did not provide adequate on-the-record instructions and advisals concerning the necessity of completing the biometrics requirement, as required by regulation and the Board's decision in *Matter of D-M-C-P-*, 26 I&N Dec. 644 (BIA 2015).¹ Accordingly, the respondents' appeal will be sustained and the record remanded for further consideration of their applications for relief.

The following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

¹ Under the circumstances, we need not address the respondents' arguments concerning ineffective assistance of counsel. See *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal regarding ineligibility for relief where an applicant is otherwise statutorily ineligible for such relief); see also *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").