



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: R [REDACTED] B [REDACTED], L [REDACTED] C [REDACTED] ... A [REDACTED]-357

**Date of this notice: 9/6/2019**

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:  
Guendelsberger, John

User team: Docket

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**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A [REDACTED]-357 – Pompano Beach, FL

Date: **SEP - 6 2019**

In re: L [REDACTED] C [REDACTED] R [REDACTED] B [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Beresford A. Landers Jr., Esquire

APPLICATION: Remand

The respondent has filed an appeal from the Immigration Judge's order dated June 27, 2019. The record will be remanded.

The Immigration Judge's order in this matter reflects that the respondent withdrew his applications for relief, withdrew his application for admission to the United States, and waived appeal. The record, however, is not sufficient to show that any waiver of appeal was knowing and intelligent. *See Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320, 1323 (BIA 2000) (requiring that waiver of appeal be knowing and intelligent and explaining that a determination as to whether a waiver was knowing and intelligent depends on the facts of the individual case).

The respondent states on his notice of appeal that he is Cuban and came to the United States with his wife to seek asylum. He reports that his wife was released from detention in the United States but that he was not released. He states that he felt pressured and coerced and requested voluntary departure but was not properly advised of his rights, including his right to continue with his asylum application. He requests to have his case consolidated with that of his wife.

The transcript of proceedings shows that the unrepresented respondent submitted an asylum application at his hearing on June 27, 2019 (Tr. at 16-18). Immediately after submitting the application, the respondent said that he wished to "add something" (Tr. at 18). He said that he wanted to request voluntary departure (Tr. at 18). The Immigration Judge then explained that the respondent was not eligible for voluntary departure but that the respondent could withdraw his application for admission and his applications for asylum and related relief and could purchase a ticket to leave the United States by way of the Miami International Airport (Tr. at 19). When asked if that was how he wished to proceed, the respondent said that he did not know if he qualified for a bond and that he wanted to see if he could qualify for a bond (Tr. at 20). The attorney for the Department of Homeland Security advised that the respondent's bond request had already been denied (Tr. at 20-21).

The transcript shows that the respondent was provided with a description of requirements concerning withdrawing his application for admission, purchasing a ticket to travel, and waiving appeal (Tr. at 21-23). The transcript further shows that the interpreter was required to repeat questions for the respondent on two occasions, including when he was asked whether he agreed to waive his right to appeal (Tr. at 21-22). The respondent was not asked whether he understood, whether he had any questions, or whether he wanted to do something other than withdraw his application for admission.

The transcript before us is not sufficient to establish that the respondent had a basic understanding of what he was agreeing to do at his hearing. Just minutes before saying "yes" to the Immigration Judge's proposal that the respondent withdraw his applications for admission and for relief, the respondent had submitted an asylum application with a lengthy and detailed narrative concerning severe mistreatment in Cuba at the hands of government officials and concerning his fear of return. Yet, he was never asked whether he still had a fear of returning to Cuba. Insofar as the respondent added a request for voluntary departure after submitting his asylum application, he was not asked whether that was in the alternative, in the event his other applications were denied. Nor, as the respondent states on appeal, was he told that he had an option of pursuing his asylum application. Additionally, the Immigration Judge described the right to appeal at the end of the hearing as something that the respondent "otherwise" had a right to, but not as something the respondent could actually choose (Tr. at 22).

Under the circumstances, we conclude that the respondent's waiver of appeal rights was not knowing or intelligent. *See Matter of Rodriguez-Diaz*, 22 I&N Dec. at 1323. Furthermore, the waiver of appeal rights was linked to a waiver of the respondent's application for admission and applications for relief from removal. Accordingly, the record will be remanded for further proceedings.

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

  
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FOR THE BOARD