U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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31 Hopkins Plaza, Room 1600
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Name: ABRAHAM, RAYMOND

A 089-487-598

Date of this notice: 3/19/2015

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:
Pauley, Roger
Greer, Anne J.
Wendtland, Linda S.

Userteam: Docket

File: A089 487 598 - Baltimore, MD

Date: MAR 19 2015

In re: RAYMOND ABRAHAM

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: K. Thomas Li, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Termination; administrative closure; voluntary departure

The respondent, a native and citizen of Tanzania, appeals the Immigration Judge's November 1, 2012, decision finding him removable as charged and denying his motion to administratively close proceedings. The Immigration Judge granted the respondent's request for voluntary departure. *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b). The record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including credibility determinations and (under the law of the Circuit with jurisdiction over this case) the likelihood of future events, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *see Turkson v. Holder*, 667 F.3d 523, 530 (4th Cir. 2012). We review all other issues, including questions of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge did not err in finding the respondent removable as charged (I.J. at 2; Tr. at 37-38). The respondent argues that the ground of removability with which he is charged, section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), is not applicable to him because the Form I-512L (Authorization for Parole of an Alien Into the United States) (Exh. 3, Tab A) that he possessed on the date of his application for admission permitted him to travel to the United States, and therefore qualifies as a "valid entry document" (Respondent's Br. at 8). We disagree. The respondent's parole into the United States in order to pursue a then-pending application for adjustment of status does not qualify as an entry, and therefore his Form I-512L was not a "valid entry document." *See Matter of Hinojosa*, 17 I&N Dec. 322, 322-23 (BIA 1980) (stating that an applicant for admission who is paroled into the United States does not make an "entry"). Further, although the respondent is correct in stating that his Form I-512L was a valid *travel* document, it does not follow that it was a "valid *entry* document."[1]

[1] While the respondent asserts in that regard that the Department of Homeland Security had the burden to prove his inadmissibility by clear and convincing evidence, the burden of proof instead (continued...)

Accordingly, the Immigration Judge did not err in finding that, at the time of his application for admission, the respondent was not in possession of "a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document" required by the Act, and therefore that the respondent is inadmissible under section 212(a)(7)(A)(i)(I) of the Act.

However, we will remand to the Immigration Judge to reconsider the respondent's request for administrative closure (*see* I.J. at 2). *See Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012). The evidence indicates that the Department of Homeland Security (DHS) took possession of the respondent's passport in 2007 or 2008 (Exh. 5, Tabs I-J), and the respondent claims that it has not been returned to him. The parties detailed the efforts that have been made to locate the passport, to document its loss, and to obtain a new passport from the Embassy of Tanzania, none of which were successful (Tr. at 16-19, 22, 41-44, 46, 53-57; Exh. 5 at 1-3). As in *Matter of Avetisyan*, the respondent here contends that he is awaiting resolution by the DHS of a matter potentially involving a need for internal coordination by DHS components—in this case Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP)—that the DHS may need to address eventually in order to obtain a travel document for the respondent's repatriation[2] (Tr. at 16-19, 22, 41-44, 46, 53-57; Exh. 5 at 1-3, Tabs I-J). On remand, the Immigration Judge may conduct further fact-finding with regard to the foregoing contentions by the respondent, in the course of weighing the factors set forth in *Matter of Avetisyan* to determine whether administrative closure is warranted. The Immigration Judge should also explore whether the DHS may be willing to either extend the period of voluntary departure until the issue concerning the respondent's passport is resolved, or agree to some other form of deferred action.

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

FOR THE BOARD

Board Member Anne J. Greer respectfully dissents given that the respondent did not pay the required voluntary departure bond.

(...continued)
is upon him to establish that he *is* admissible, given his status as an applicant for admission. *See* section 240(c)(2)(A) of the Act, 8 U.S.C. § 1229a(c)(2)(A); *see also* section 212(d)(5)(A) of the Act (stating that parole is not an admission).

[2] While we acknowledge that neither the Board nor an Immigration Judge may compel the DHS to produce the respondent's passport or an explanatory letter, such an action is not beyond the power of a federal court.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND

File: A089-487-598 November 1, 2012

In the Matter of

RAYMOND ABRAHAM	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: Immigration and Nationality Act Section 212(a)(7)(A)(i)(I).

APPLICATIONS: Termination of proceedings and post-conclusion voluntary departure.
Individual hearing date: November 1, 2012.

ON BEHALF OF RESPONDENT: K. THOMAS LI

ON BEHALF OF DHS: JENNIFER E. PIATESKI

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of Tanzania. He entered the United States most recently in October 2007. He was issued a Notice to Appear on June 22, 2009. At previous Master Calendar hearings, the respondent admitted some of the allegations and conceded removability as charged. The respondent, ultimately, in an amended pleading on September 20,

2011, admitted allegations 1, 2, 3 and 4. With respect to allegation 5, he claims that he did possess a valid entry document when he tried to enter the United States, but that he did not now have it. The respondent explained then and has explained now that it was given to Customs and Border Protection officers; however, the passport, a copy of which appears in the record, has apparently gone missing. It no longer appears to be in the possession of DHS. The respondent did concede removability as charged. The respondent was also found removable as charged by the Immigration Court.

The respondent had made various requests to include prosecutorial discretion, administrative closure, and termination of proceedings. The respondent was not granted prosecutorial discretion by DHS, and the Court has declined to grant administrative closure or termination of proceedings. The Court concludes that that is not warranted in the case. The Court shares the concern that the passport went missing; however, the respondent does have a copy of the passport in the record at Group Exhibit 5, Tab H.

The respondent is seeking post-conclusion voluntary departure. The requirements for post-conclusion voluntary departure are set out in INA Section 240B and the accompanying regulations at 8 C.F.R. Section 1240.26(c). Specifically, the respondent has demonstrated to the Court's satisfaction that he meets the requirements for post-conclusion voluntary departure.

As respondent's counsel points, out that given how the proceeding went, the respondent does actually have more than a year of physical presence immediately preceding the date the Notice to Appear was issued, even though he is an arriving alien. Accordingly, the Court finds no reason that him being an arriving alien would necessarily bar him in this case from post-conclusion voluntary departure.

The respondent has also satisfied the Court that he meets the other requirements to include that he has "established by clear and convincing evidence that the alien has the means to depart the United States." The respondent does have a copy of a valid passport in the record. That appears at Group Exhibit 5, Tab H. The Court notes that under the regulations at 8 C.F.R. Section 1240.26(c)(2), the section on travel documentation, that the respondent is to present a passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing.

That section also notes that the Service shall have full opportunity to inspect and photocopy the documentation and challenge its authenticity or sufficiency before voluntary departure is granted. The record does reflect that DHS was provided with the passport. The fact that there is a copy of the passport in the record at least satisfies the Court that the respondent has a valid passport or other travel document, and that he should, in fact, be able to get another passport or

other travel document from the embassy of Tanzania since he has this copy. The Court realizes that the respondent is representing that he has not been able to get such a replacement passport; however, the Court is satisfied that he has made a sufficient showing to be granted post-conclusion voluntary departure. Of course, if he is not able to meet the requirements, then the Court's order would become a removal order.

Accordingly, the Court hereby grants the respondent's application for post-conclusion voluntary departure. The respondent is going to be granted post-conclusion voluntary departure in the maximum amount of 60 days. That means the respondent must leave the United States on or before December 31, 2012. A voluntary departure bond is also set in the minimum amount of $500. The respondent must post the bond with the DHS Immigration and Customs Field Office within five business days of the date of this order. See 8 C.F.R. Section 1240.26(c)(i).

In the alternate, if the voluntary departure conditions are not met, the respondent is ordered removed from the United States to Tanzania.

In accordance with 8 C.F.R. Section 1240.26, the respondent is hereby advised that if he files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure shall be terminated automatically and the alternate order of removal shall take

effect immediately. The respondent is also advised that within 30 days of the filing of any appeal with the Board of Immigration Appeals, the respondent must submit sufficient proof of having posted the required voluntary departure bond. If the alien does not provide timely proof to the Board that the voluntary departure bond has been posted with DHS, then the Board will not reinstate the period of voluntary departure in its final order. See generally 8 C.F.R. Section 1240.26(c)(3)(i)-(iii).

Finally, the respondent is advised that the regulations provide for a civil monetary penalty of $3,000 in the event that the respondent fails to depart as required. See 8 C.F.R. Section 1240.26(j).

Please see the next page for electronic signature
ELIZABETH A. KESSLER
Immigration Judge

//s//

Immigration Judge ELIZABETH A. KESSLER

kesslere on January 22, 2013 at 5:42 PM GMT

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE ELIZABETH A. KESSLER, in the matter of:

RAYMOND ABRAHAM

A089-487-598

BALTIMORE, MARYLAND

is an accurate, verbatim transcript of the recording as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Amy D. Lane

AMY D. LANE (Transcriber)

FREE STATE REPORTING, Inc.

JANUARY 8, 2013

(Completion Date)