



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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125 E. John Carpenter Fwy, Ste. 500  
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Name: A [REDACTED]-G [REDACTED] K [REDACTED] A [REDACTED]-053  
Riders: [REDACTED]-054

Date of this notice: 3/24/2016

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'Herron, Margaret M  
Neal, David L  
Greer, Anne J.

Userteam: Docket

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Falls Church, Virginia 22041

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Files: A [REDACTED] 053 – Dallas, TX  
A [REDACTED] 054

Date: MAR 24 2016

In re: K [REDACTED] M [REDACTED] A [REDACTED] -G [REDACTED]  
N [REDACTED] A [REDACTED] -G [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Emmanuel Ncube Socks, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled (both respondents)

APPLICATION: Continuance

The respondents,<sup>1</sup> natives and citizens of El Salvador, appeal from the Immigration Judge's decision dated September 29, 2015, denying their request for a continuance and ordering them removed from the United States. The Department of Homeland Security (DHS) has not filed an opposition to the appeal. The appeal will be sustained.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

On September 14, 2015, the Immigration Judge continued proceedings, in part, because of a defect in the service of one of the Notices to Appear (NTAs) (Tr. at 2-4). On September 29, 2015, the respondents, through counsel, admitted the factual allegations in their respective NTAs and conceded the charges of removability (Tr. at 7). The respondents indicated that they intended to seek Special Immigrant Juvenile (SIJ) status and requested a continuance (Tr. at 7-8). The DHS did not express an opposition to the respondents' request. The Immigration Judge concluded that the respondents did not establish good cause for a continuance, declined to further continue proceedings, and ordered the respondents removed to El Salvador. Upon review of the record and consideration of the totality of the circumstances, we conclude that the respondents have established good cause for a continuance and that the request should have been granted. Accordingly, the respondents' appeal will be sustained and the record will be remanded for further proceedings. The following orders will be entered.

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<sup>1</sup> The respondents, who are both minors, are brother (A [REDACTED] 054) and sister (A [REDACTED] 053).

ORDER: The respondents' appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings and the entry of a new decision.

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
DALLAS, TEXAS

File: A [REDACTED]-053  
A [REDACTED]-054

September 29, 2015

In the Matter of

K [REDACTED] M [REDACTED] A [REDACTED] -G [REDACTED] )  
N [REDACTED] A [REDACTED] -G [REDACTED] ) IN REMOVAL PROCEEDINGS  
RESPONDENTS )

CHARGES: A violation of Section 212(a)(6)(A)(i).

APPLICATIONS: None stated.

ON BEHALF OF RESPONDENT: EMMANUEL N. SOCKS

ON BEHALF OF DHS: JOHNSTON L. ALLUMS

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondents are two children, both natives and citizens of El Salvador, who were issued Notices to Appear on May 24, 2015. See Exhibit 1 in each case. The respondents were scheduled for initial Master Calendar hearings on September 14, 2015. On that day, the respondents failed to appear for their initial master, however, their attorney, Mr. Socks, did appear. Mr. Socks represented to the Court that there was some confusion on his clients' part about being in Court and that is why they were not there and he begged the Court for mercy to not enter an in absentia order against

the respondents on that day. The Court, in an effort to provide courtesy to Mr. Socks, did not proceed in absentia even though his clients had been properly notified of the hearings that day and reset the cases until September 29, 2015, at 8:30 for their appearance.

The Court also, on that day, determined that the service of the Notice to Appear on case number 054 appeared to be defective because of the age of the respondent. So the record would reflect that the Government re-served both Notices to Appear on Mr. Socks in open court on September 14 so that the respondents would have good service on the NTA. Also by resetting the Master Calendar until today, that also ensured that the respondents had the Notice to Appear in their possession for ten days before being called upon to respond to it. Counsel for the respondents was advised on the record on September 14 that he needed to be prepared today, on September 29, to do pleadings and relief.

On September 29, 2015, the respondents appeared back before the Court accompanied by their guardian and their attorney. Each of the respondents, through counsel, admitted allegations 1 through 4 on the Notice to Appear and conceded their removability from the United States as charged, pursuant to Section 212(a)(6)(A)(i) of the Act. The record will reflect that both respondents designated the country of El Salvador as the country of removal. Based on the admissions and concessions entered by the respondents through their attorney of record, the Court finds that each respondent has conceded their removability from the United States as charged pursuant to Section 240(c)(1)(A) of the Act.

Then the respondents were asked through counsel to identify relief. Counsel for the respondents indicated that he believed that his clients would be eligible to eventually pursue an SIJ visa, however no such petition had been filed in the State Courts in the

state of Oklahoma to obtain the predicate order necessary for that process to take place. When the Court asked, well why has that petition not been filed? The respondents' attorney said, well I have not had a chance to meet with my clients since we were here last time, they live in Oklahoma.

The Court finds that explanation unpersuasive. Mr. Socks, who has his office in Dallas, Texas, according to the E-28 filed in this case, chose to accept employment in a case where his clients live in another state. The Court extended courtesy to Mr. Socks at the last appearance by not proceeding in absentia against his clients when the Court was certainly authorized to do so.

The Court took steps to make sure that the Notices to Appear were properly served on Mr. Socks at the last Court appearance so that he would have his ten days and be prepared to respond today. The record would reflect that the respondents' counsel was instructed to be ready to identify relief.

If the respondents' attorney had appeared today in Court with the State Court petition filed, the Court would have administratively closed this case pending the adjudication of the State Court petition. However, no State Court petition has even been filed. So, therefore, there is nothing to wait for. The Court finds that the respondents have failed to articulate good cause for a continuance in accordance with the Board's decision in Matter of Perez, 19 I&N Dec. 433 (1987). Therefore, the Court finds that the respondents have failed to demonstrate good cause for a continuance. The Court will further find that the respondents' counsel was instructed to be ready today to identify relief, was given time to be ready and failed to take steps to file the requisite petitions in State Court or to identify some form of relief that this Court had jurisdiction over.

The respondents were offered pre-conclusion voluntary departure and rejected

that.

Therefore, it is hereby ordered that each of the respondents be removed from the the United States to the nation of El Salvador.

The respondents will be advised of their appeal rights through their parent, separately on the record.

**Please see the next page for electronic**

**signature**

MICHAEL P. BAIRD  
United States Immigration Court Judge

//s//

Immigration Judge MICHAEL P. BAIRD

bairdm on November 30, 2015 at 12:34 PM GMT