



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Atlanta, GA 30303

Name: JALIA, AMIR ALI

A096-751-896

Date of this notice: 1/6/2011

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:

Grant, Edward R.

Liebowitz, Ellen C

Malphrus, Garry D.

For more unpublished BIA decisions, visit www.irac.net/unpublished

Falls Church, Virginia 22041

Files: A096 751 896 - Atlanta, GA

Date: JAN 06 2011

In re: AMIR ALI JALIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Laine S. Posel, Esquire

ON BEHALF OF DHS: Gregory E. Radics
Assistant Chief Counsel

APPLICATION: Remand

The respondent, a native and citizen of India, appeals the Immigration Judge's decision of January 27, 2009, premitting his application to adjust status pursuant to section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i). The appeal will be sustained and the case remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 211 (BIA 2010).

The record shows that the respondent was scheduled for a master calendar hearing on January 27, 2009. On page 1 of the 8-page transcript dated January 27, 2009, the Immigration Judge summarized the prior hearing, stating: "This case is reset for *written* arguments on the issue of whether the respondent's eligible to adjust under 245(i) (emphasis added)." (Tr. at 1). Both the respondent's and the government's written briefs focus only on the issue of whether the labor certification submitted for the respondent was filed by April 30, 2001. 8 C.F.R. § 245.10(a)(1)(i).

The Immigration Judge summarized the respondent's position as being eligible to adjust because the labor certification had been filed by April 30, 2001, and stated that the case was reset "giving both parties the opportunity to file written briefs in support of their position." (I.J. at 2). However, in his decision the Immigration Judge premitted the respondent's application for a different reason, concluding that the respondent did not also demonstrate that he was physically present in the United States on December 21, 2000. *See* 8 C.F.R. § 1245.10(a)(1)(ii)

The alien shall have a reasonable opportunity to examine the evidence, present evidence on the alien's own behalf, and to cross-examine witnesses. Section 240(b)(4)(B) of the Act, 8 U.S.C. 1229a(b)(4)(B). However, in this case, the respondent was never provided the opportunity

to submit a written brief on the issue of whether he was physically present in the United States on December 20, 2000. He was never scheduled for an individual hearing. He was never given the opportunity to present evidence or call witnesses at a merits hearing on the factual issues of his eligibility for relief. Under the circumstances, we conclude that the respondent was not provided a reasonable opportunity to present evidence on his own behalf.

We will thus remand the case to allow the parties the opportunity to present further relevant testimony, documentary evidence, witnesses, and argument regarding the respondent's eligibility for adjustment of status and any other form of relief for which he may be eligible. Accordingly, the following order will be issued.

ORDER: The appeal is sustained and the record is remanded for further proceedings consistent with this decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Atlanta, Georgia

File A 96 751 896

January 27, 2009

In the Matter of

AMIR ALI JALIA,

Respondent

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGE:

APPLICATION:

ON BEHALF OF THE RESPONDENT:

Lane Pozell, Esquire

ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:

Mele Moreno, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is an adult male native and citizen of India who was placed in removal proceedings with the filing of a Notice to Appear with the Court on August 12, 2008. That Notice to Appear dated February 12, 2008 charges the respondent with being removable from the United States pursuant to provisions of Section 212(a)(6)(A)(i) of the INA as an individual who is present in the United States without being admitted, paroled or inspected.

At a master calendar hearing on September 25, 2008, the respondent admitted the factual allegations, conceded

removability and requested relief in the form of adjustment of status based on an approved I-140. Respondent alleged he was eligible to adjust his status under 245(i) because the labor certificate had been filed before April 30, 2001.

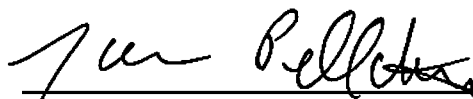
The Court reset the case to today's date, giving both parties the opportunity to file written briefs in support of their position. Both parties filed written argument with documents. In order to be eligible, respondent must demonstrate that he was physically present in the United States on December 21, 2000. The requirement is not that at some time before December 21, 2000 and on today's date he is in the United States. The requirement is that he clearly demonstrate he was physically present in the United States on that date. The only evidence presented of physical presence in the United States on that date is an ID from the Atlanta auto auction with 2000 on one side of it and 2001 on the other side. It is noted that the 1 of the 2001 appears to be a different font than the font of the remaining numerals. That alone would be insufficient to establish presence on the day. Having failed to establish presence on the necessary date, it would not appear to the Court that the respondent has met his burden of demonstrating eligibility to adjust status.

There being no other application for relief before the Court, the Court will enter an order of removal to India based on the charge in the Notice to Appear. Based on a thorough review

of the entire record, the following orders are issued.

IT IS ORDERED that respondent's application for adjustment of status is pretermitted. It has failed to carry the burden of demonstrating he is statutorily eligible for such relief.

The respondent is further ordered removed from the United States to India on the charge contained in the Notice to Appear.



J. DAN PELLETIER
United States Immigration Judge

CERTIFICATE PAGE

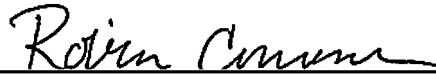
I hereby certify that the attached proceeding
before J. DAN PELLETIER in the matter of:

AMIR ALI JALIA

A 096 751 896

Atlanta, Georgia

was held as herein appears, and that this is the original
transcript thereof for the file of the Executive Office for
Immigration Review.



Robin Conover (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

April 6, 2009
(Completion Date)

RECEIVED
JUDGE J. DAN PELLETIER
APR 17 2009

APR 17 2009 9:00 AM

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