



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: G [REDACTED]-M [REDACTED] A [REDACTED] A [REDACTED]-127

Date of this notice: 7/2/2015

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:
Greer, Anne J.
O'Herron, Margaret M
Holmes, David B.

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 20530

File: A-127 – Atlanta, GA

Date: JUL - 2 2015

In re: A-G-M

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rebeca E. Salmon

ON BEHALF OF DHS: Sirce E. Owen
Assistant Chief Counsel

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

APPLICATION: Continuance

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's decision dated January 27, 2015, denying her request for a continuance and ordering her removed from the United States to Guatemala. The Department of Homeland Security (DHS) opposes the appeal. The respondent's appeal will be sustained, and the record will be remanded.

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 December 16, 2014, the respondent sought a continuance for attorney preparation. At that time, the Immigration Judge instructed counsel that if the respondent intended to seek Special Immigrant Juvenile (SIJ) status, she must provide a copy of the dependency petition filed with the state court (Tr. at 6).¹ The proceedings were continued until January 27, 2015. At the next hearing, counsel informed the Immigration Judge that Alabama counsel had been retained for the filing of the juvenile dependency petition, as the respondent lives in Alabama, and she was waiting for confirmation from that attorney that the petition had been filed. The DHS indicated that it opposed a further continuance (Tr. at 9). The Immigration Judge declined to continue proceedings further and ordered the respondent removed to Guatemala (Tr. at 9).

¹ A necessary precondition to SIJ status is the declaration of a juvenile court that the respondent is deserving of protection because reunification with his or her parents was not viable due to abuse, neglect, or abandonment. See section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J).

On appeal, the respondent argues that the Immigration Judge (1) erred in requiring her to produce her juvenile state dependency petition because it had not been filed and there had not been adequate time to do so, providing a copy of the petition would violate the Alabama Juvenile Code and the Georgia Rules of Professional Conduct, and the petition is unnecessary to establish her prima facie eligibility for SIJ status; (2) violated her due process rights to a fair opportunity to apply for available relief and to equal protection under the law; and (3) abused his discretion by refusing to grant the respondent a continuance to allow her to file for SIJ status.

The decision to grant or deny a continuance is within the discretion of the Immigration Judge, if good cause is shown. *See* 8 C.F.R. §§ 1003.29 and 1240.6. In determining whether good cause exists to continue removal proceedings, a variety of factors may be considered, including, but not limited to the DHS's response to the motion, the reason for the continuance, and any other relevant procedural factors. *See e.g., Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (discussing the factors to be considered in determining whether good cause exists to continue proceedings to await adjudication of a family-based visa petition). Absent evidence of an alien's ineligibility for SIJ status, an Immigration Judge should, as a general practice, continue proceedings to await adjudication of a pending state dependency petition.

At the time of the hearing, the petition had not yet been filed. There does not appear, however, to have been an intentional or unwarranted delay. Under these circumstances, a short continuance to allow for the filing of the petition and submission of evidence of that filing would have been more prudent. A continuance would also have been consistent with guidance provided to Immigration Judges by the Chief Immigration Judge, which states that if an unaccompanied child is seeking SIJ status, "the case must be administratively closed or reset for that process to occur in state or juvenile court." *See* Memorandum from Brian M. O'Leary, Chief Immigration Judge, to Immigration Judges (Sept. 10, 2014) (Docketing Practices Relating to Unaccompanied Children Cases in Light of New Priorities).

We acknowledge that the DHS expressed opposition to a further continuance (Tr. at 15).² However, under the circumstances, we conclude that the respondent established good cause to continue proceedings to await adjudication of the dependency petition by the state court.

² The DHS did not provide a reason for its opposition to a continuance before the Immigration Judge and it has not meaningfully communicated a rationale for that position on appeal. As noted in the Immigration Judge's decision, this case involves recurring issues that have arisen in other cases (I.J. at 2). If, in other cases involving similar circumstances, the DHS opposes a continuance to await adjudication of a state dependency petition, it should be prepared to provide further explanation for that position. *See Matter of Avetisyan*, 25 I&N Dec. 688, 693 (BIA 2012) ("The circuit courts and the Board have rejected the notion that a party to proceedings may exercise absolute veto power over the authority of an Immigration Judge or the Board to act in proceedings involving motions to reopen or requests for continuances."); *see also Matter of Lamus*, 25 I&N Dec. 61, 64 (BIA 2009) (stating that the DHS's arguments advanced in opposition to a motion to continue should be considered in adjudicating the motion but that an otherwise approvable motion should be not be denied simply based on the fact that an unpersuasive argument was advanced by the DHS).

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The Immigration Judge's January 27, 2015, decision and removal order are vacated.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

File: A [REDACTED] 127

January 27, 2015

In the Matter of

A [REDACTED] G [REDACTED] - M [REDACTED]
RESPONDENT)
IN REMOVAL PROCEEDINGS)
)
)

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act.

APPLICATION: None. Motion for continuance.

ON BEHALF OF RESPONDENT: Lisa Cardona
PO Box 1614
Norcross, GA 30091

ON BEHALF OF DHS: Darcy Owen, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

This case came before the court as the result of Notice to Appear that was issued by the Department of Homeland Security. The charging document alleges that the respondent is a native and citizen of Guatemala, and that she is removable from the United States pursuant to Section 212 of the Immigration and Nationality Act.

Respondent admits the factual allegations in the Notice to Appear and she concedes removability. The court sustains the charge of removal and designates Guatemala.

The respondent through counsel was advised that at today's hearing she should submit either an I-589 or evidence that she has sought special immigrant juvenile status. This case was last before the court on December 16th, when the court gave the respondent approximately six weeks to come back with appropriate documents in support of further motion for continuance. This is one of several cases that the respondent's attorney has before the court today. Respondent's attorney routinely takes the position that she is not requires under either Georgia law or Alabama law to turn over copies of the juvenile petition. In this case, as many of the respondent's attorney, has not turned over the documents. She claims that the respondent has made contacts with somebody in the state of Alabama in order to pursue a special immigrant status. Respondent's counsel has not explained why additional time is needed, given the almost six weeks that's been provided so far in connection with this case. The respondent has not shown that there is good cause for a further continuance. There is also no evidence that the respondent is prima facie eligible for relief. She has not submitted, and routinely the counsel for this respondent does not submit, copies of the dependency petition. The court will deny motion for further continuance. The respondent is removable as charged, and the court will enter the following order.

ORDER

IT IS HEREBY ORDERED the respondent be removed from the United States based on the charge set forth in the Notice to Appear, and that she be deported to Guatemala.

Please see the next page for electronic

signature

EARLE B WILSON
Immigration Judge

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//s//

Immigration Judge EARLE B WILSON

wilsone on March 19, 2015 at 11:36 AM GMT