



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041*

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**Name: E [REDACTED]-R [REDACTED], R [REDACTED] M [REDACTED]  
Riders: [REDACTED]**

**A [REDACTED]-070**

**Date of this notice: 12/18/2019**

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:  
Kendall Clark, Molly

U.S. [REDACTED]  
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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Files: [REDACTED]-070 – El Paso, TX  
[REDACTED]  
[REDACTED]

Date: **DEC 18 2019**

In re: R [REDACTED] M [REDACTED] E [REDACTED] -R [REDACTED]  
[REDACTED]  
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENTS: Brianna Rennix, Esquire

ON BEHALF OF DHS: Veronica M. Segovia  
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture; remand

The lead respondent has filed an appeal from the Immigration Judge's decision dated October 16, 2019, which ordered the lead respondent and her family members removed from the United States.<sup>1</sup> Prior to filing the appeal, the respondent filed a motion to reopen with the Immigration Judge, and that motion is now before the Board. This is because the respondent's appeal was filed before the Immigration Judge could adjudicate the respondent's motion and the Immigration Judge issued a decision concluding that he lacked jurisdiction over the motion.<sup>2</sup> See 8 C.F.R. § 1003.2(c)(4) (providing that a motion to reopen pending with the Immigration Judge when an appeal is filed may be deemed a motion to remand and may be consolidated with the appeal to the Board). For the reasons that follow, the record will be remanded.

In her appeal statement, the respondent states that her hearing was fundamentally unfair. She explains that she was placed in the MPP (Migrant Protection Protocol) program and was therefore required to wait for her hearings in Mexico, where she lived on the streets with her children. She

<sup>1</sup> References to "the respondent" in the singular are to the lead respondent ([REDACTED] 070). The other respondents are minors and have derivative claims to asylum. On remand, the minor respondents may choose to file individual applications for asylum, withholding of removal, and protection under the Convention Against Torture.

<sup>2</sup> The Department of Homeland Security filed an opposition to the motion but did not dispute any of the facts set out in the motion.

says that she was prevented from accessing an attorney who could assist her with her application and with Immigration Court proceedings. She states that there were pro bono attorneys who were willing to represent foreign nationals as they completed their applications, but that the attorneys were prohibited by the Department of Homeland Security (DHS) from meeting with foreign nationals in the MPP program. The respondent further contends that, at her hearing, she was required to speak to the Immigration Judge in an area that was not private. She says that 25 other respondents were present and could hear what she told the Immigration Judge.

Turning to the respondent's motion to reopen, the respondent has submitted an asylum application with her motion and she states that she seeks a remand to pursue the application. She reports that she was unable to complete the application earlier because she did not have assistance and also because she and her children were kidnapped, robbed, and held for 10 days while waiting in Mexico for their hearing. She describes the specific circumstances of the kidnapping and says she was too embarrassed to tell the Immigration Judge about it at the October 3, 2019, hearing.

She explains that on October 16, 2019, she returned to the Immigration Court with an incomplete application because she was unable to understand the application. She further states that when she was asked to describe her claim, she was afraid to do so because the hearing was not confidential and there were many other respondents present. She explains that her claim includes sexual assault issues. She also reports that she was afraid to describe some of her personal experiences with gangs because she did not know whether people in the room were affiliated with gangs. She states that she heard about another women who described her experiences with gangs in an Immigration Court and who was killed as soon as she returned to her country. The respondent states in her motion that she wants to present her asylum claim in a private and safe location.

Upon review of the respondent's appeal and her motion, we conclude that a remand is appropriate. First, although the respondent stated at her hearing that she waived appeal, the transcript of her hearing reflects that she was not given full and complete warnings about waiving her appeal rights (Tr. at 95-97). *See Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320, 1323 (BIA 2000) (requiring that an appeal waiver be knowing and intelligent and providing a reasonably comprehensive formulation of an appropriate discussion of appeal rights).

Here, the respondent was not represented by counsel and, therefore, she required more extensive warnings than would a represented respondent. *See id.* at 1322. The respondent was not given all of the warnings set out in *Matter of Rodriguez-Diaz*. The respondent was not advised, for example, that she did not have to make a decision immediately about whether to waive appeal (Tr. at 95-97). *See id.* at 1323. Also, the specific advisals that were provided to the respondent included information that the respondent and her family would have to wait in Mexico for possibly as long as 2 years before the Board would decide her appeal (Tr. at 96). The respondent has now explained that she was kidnapped and robbed in Mexico while waiting for a prior hearing. Thus, although it appears that the Immigration Judge in this case simply wanted to provide the respondent with notice of her circumstances, the Immigration Judge's warning may well have been coercive

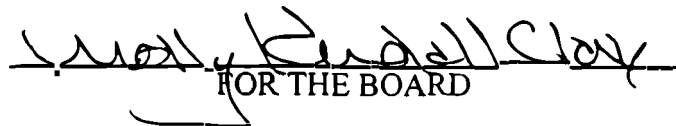
in light of the respondent's history of abuse in Mexico.<sup>3</sup> Taking into consideration the totality of the circumstances, we conclude that the respondent's appeal waiver was not sufficiently knowing and intelligent.

Furthermore, the respondent has offered explanations on appeal and in her motion for her failure to submit a complete application to the Immigration Judge. The respondent states that she was prevented from working with pro bono attorneys who were willing to assist her. She also states that the lack of confidentiality at the hearing led to her inability to tell the Immigration Judge about her fear of return to her country. With regard to the latter point, the regulations require that asylum information be kept confidential. Even the fact that an alien has applied for asylum (regardless of the claim) is protected, with some limitations, from disclosure. *See* 8 C.F.R. § 1208.6. Given the respondent's explanations for why she was unable to explain her claims previously, a remand is warranted to allow the respondent to pursue her application for asylum, withholding of removal, and protection under the Convention Against Torture.

Accordingly, the record will be remanded to the Immigration Judge for further proceedings.

ORDER: The respondent's motion is granted.

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

  
FOR THE BOARD

<sup>3</sup> We note our concerns that the Immigration Judge's warning about being returned to Mexico presumed that the respondent would lose her appeal and then be moved from Mexico to Honduras (Tr. at 96).