U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: S[redacted]-M[redacted], K[redacted] ... **A [redacted]-166**

Date of this notice: 2/14/2020

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:
Gorman, Stephanie

MalikAr
Userteam: Docket

File: [redacted]-166 – New York, NY

Date: FEB 14 2020

In re: K[redacted] B[redacted] S[redacted]-M[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Daven R. Ghandi, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, has appealed from an Immigration Judge's June 7, 2019, decision denying her motion to reopen to apply for asylum, withholding of removal, and protection under the Convention Against Torture. The record does not contain a response from the Department of Homeland Security (DHS). The respondent's appeal will be sustained, and the record will be remanded to the Immigration Judge for further proceedings consistent with this order.

We review the Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(ii); *see also Hui Lin Huang*, 677 F.3d 130 (2d Cir. 2012) (distinguishing between findings of fact and questions of law).

On appeal, the respondent argues that the Immigration Judge erred when she concluded that the new, material evidence included in the respondent's motion did not warrant reopening. The respondent maintains that she submitted a completed application for asylum, withholding of removal, and protection under the Convention Against Torture. She also contends that she is statutorily eligible for asylum because she submitted her application within 1 year of her entry to the United States. Finally, she claims the Immigration Judge abused her discretion in denying her motion to reopen.

The respondent is correct that her asylum application is timely.[1] *See* section 208(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(B). Further, the record establishes that the respondent appeared pro se at her initial removal hearing on December 13, 2018, and used the services of an interpreter because she did not speak English. The digital audio recording of her December 13, 2018, master calendar hearing further establishes that she did not receive specific notice from the Immigration Judge that she had to file an asylum application at her next hearing

[1] The Notice to Appear alleges that the respondent first entered the United States on June 27, 2018. The respondent filed her motion to reopen, which included her asylum application, with the Immigration Court on May 30, 2019. The respondent therefore filed the application within 1 year of her arrival in the United States, and the shipping receipt referenced by the Immigration Judge is not needed to establish this fact (IJ at 3).

on May 9, 2019, or the application would be deemed abandoned.[2] The hearing notice the respondent received for the May 9, 2019, hearing also did not include a notation indicating that all applications for relief had to be filed or be deemed abandoned.

Given these circumstances, the respondent did not receive a full and fair opportunity to apply for asylum, withholding of removal, and protection under the Convention Against Torture. *See, e.g., Dedji v. Mukasey*, 525 F.3d 187, 192 (2d Cir. 2008) (noting that it is a matter of concern when an Immigration Judge's strict adherence to the established time limit prevents an alien from presenting his or her case); *Burger v. Gonzales*, 498 F.3d 131, 134 (2d Cir. 2007) (noting that aliens are entitled to due process and must be afforded the opportunity to be heard at a meaningful time and in a meaningful manner). We therefore sustain the respondent's appeal and grant her motion to reopen to apply for relief from removal. We further remand the record to the Immigration Judge for a full hearing regarding the respondent's eligibility for relief and for the entry of a new decision.

ORDER: The respondent's appeal is sustained, her proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with this order.

FOR THE BOARD

[2] The Immigration Judge did not explicitly state that the respondent must file her asylum application on May 9, 2019, or she would lose her ability to do so. The Immigration Judge instead told the respondent she was giving her the opportunity to find representation and to see whether she might want to submit an asylum application. The Immigration Judge also said that this would be the only time she could continue the respondent's case "like this." These statements were not sufficiently clear to put an unrepresented alien who was communicating through an interpreter on notice of the Immigration Judge's strict filing deadline or the consequences of non-compliance.