



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: KOKWARO, ALFRED

A 087-214-276

Date of this notice: 6/12/2020

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:
Donovan, Teresa L.
Kelly, Edward F.
Adkins-Blanch, Charles K.

User team: Docket

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Falls Church, Virginia 22041

File: A087-214-276 – Louisville, KY

Date:

JUN 12 2020

In re: Alfred KOKWARO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sam Hasan, Esquire

ON BEHALF OF DHS: Sherry L. Hurley
Assistant Chief Counsel

APPLICATION: Continuance

The respondent, a native and citizen of Kenya, appeals from the Immigration Judge's decision dated April 19, 2018, ordering his removal from the United States. The appeal will be sustained and the record will be remanded for further proceedings consistent with this decision.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was granted conditional resident status pursuant to section 216 of the Immigration and Nationality Act, 8 U.S.C. § 1186a, on or about June 12, 2009. He was issued a Notice to Appear on or about December 3, 2012, and charged with removability under section 237(a)(1)(D)(i) of the Act, 8 U.S.C. § 1227(a)(1)(D)(i), as an alien whose conditional permanent resident status has terminated (Exh. 1). The respondent conceded removability and informed the Immigration Judge that he had filed a waiver of the requirement to file a joint petition under section 216 of the Act (Form I-751). On July 12, 2016, he informed the Immigration Judge, by and through counsel, that the U.S. Citizenship and Immigration Services (USCIS) denied his Form I-751 because he did not provide the requested information. He was granted a continuance to file a second Form I-751 (Tr. at 13-15).

On April 19, 2018, the respondent informed the Immigration Judge that the Form I-751 remained pending before USCIS. The Immigration Judge determined that she did not have jurisdiction to review the pending Form I-751, denied a further continuance, and ordered the respondent's removal from the United States (Tr. at 17-20).

On appeal, the respondent argues that he established good cause for a continuance, that is, his Form I-751 remained pending before USCIS (Respondent's Br. at 9). We agree with the respondent that he may be able to establish his eligibility for a continuance. We have held that where an alien is prima facie eligible for a waiver under section 216 of the Act and wishes to have USCIS adjudicate the application for such a waiver, proceedings should be continued in order to allow the USCIS to adjudicate the application (Form I-751). See *Matter of Stowers*, 22 I&N Dec. 605 (BIA 1999). See also *Matter of Mendes*, 20 I&N Dec. 833 (BIA 1994).

In the instant case neither the Immigration Judge nor the parties addressed the holding in *Matter of Stowers* when discussing the respondent's continuance request.¹ Therefore, it is appropriate to remand the record for the Immigration Judge to determine, in the first instance, whether the respondent is able to establish prima facie eligibility for the waiver. If prima facie eligibility is established, the Immigration Judge shall continue the proceedings for the USCIS to adjudicate the respondent's pending Form I-751. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and the record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

¹ Given our decision to remand the record we will not address the respondent's remaining arguments.