



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MORALES-ABREGO, YURY EM... A 099-534-776

Date of this notice: 6/24/2014

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:
Hoffman, Sharon

yungc
Userteam: Docket

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Falls Church, Virginia 20530

File: A099 534 776 – Seattle, WA

Date: JUN 24 2014

In re: YURY EMMANUEL MORALES-ABREGO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Andrew J. Oliver, Esquire

APPLICATION: Administrative closure

The respondent, a native and citizen of El Salvador, appeals from the May 28, 2013, decision of the Immigration Judge denying the respondent's request for administrative closure of removal proceedings. The record will be remanded.

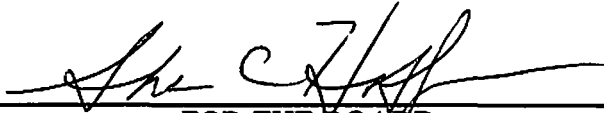
The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges on a de novo basis. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

In this case, the respondent requested administrative closure of his removal proceeding in order to pursue a provisional unlawful presence waiver of inadmissibility. The regulations concerning the eligibility of certain immigrants to apply for a provisional unlawful presence waiver of inadmissibility were finalized and effective on March 4, 2013. *See* 8 C.F.R. § 212.7(e); 78 Fed. Reg. 535 (Jan. 3, 2013). The Immigration Judge denied administrative closure based primarily on opposition from the Department of Homeland Security (DHS).

In *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), however, the Board held that DHS opposition is not dispositive for a request to administratively close, if such action is otherwise appropriate. In particular, the Immigration Judge should weigh all relevant factors, including but not limited to: (1) the reason administrative closure is sought; (2) the basis for any opposition to administrative closure; (3) the likelihood the respondent will succeed on any petition, application, or other action he or she is pursuing outside of removal proceedings; (4) the anticipated duration of the closure; (5) the responsibility of either party, if any, in contributing to any current or anticipated delay; and (6) the ultimate outcome of removal proceedings when the case is recalendared before the Immigration Judge or the appeal is reinstated before the Board. *See Avetisyan* at 696. Inasmuch as the Immigration Judge did not address those factors, and because

consideration of those factors may require additional factfinding, we find it appropriate to remand the record to the Immigration Judge. *See* 8 C.F.R. § 1003.1(d)(3)(iv).

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
SEATTLE, WASHINGTON

File: A099-534-776

May 28, 2013

In the Matter of

YURY EMMANUEL MORALES-ABREGO

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGE: Present without admission.

APPLICATION: Administrative closure.

ON BEHALF OF RESPONDENT: ANDREW OLIVER

ON BEHALF OF DHS: ANNE MCELEARNEY

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of El Salvador. He is aged 38. He was placed in proceedings by the filing of his Notice to Appear on December 29, 2005. This has been designated as Exhibit 1. Respondent has admitted the allegations, and conceded removability.

I take note, and I specifically went over with counsel this afternoon, the fact that the respondent had previously made a request for asylum and related relief, and, of course, the respondent is free to pursue that request. But it has been made clear to me that the respondent does not want to make any such requests. Indeed, he

has chosen to designate El Salvador, the country of his citizenship.

The respondent has requested that the case be administratively closed in that he is married to a United States citizen, and there is an approved I-130. The respondent would like to be able to apply for the USCIS provisional and lawful presence waiver, and needs the case to be administratively closed for that reason.

The Department has opposed the request on the basis that the respondent is deemed, in their view, to be "a recent entrant," and, therefore, not eligible for this benefit. As I have stated on this record, I have been impressed by the generosity of the Trial Attorneys that I work with with regard to their exercising prosecutorial discretion to assist diverse respondents.

In my view, prosecutorial discretion means prosecutorial discretion. And while I recognize, as argued by the respondent, that under Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012), I can administratively close a case over opposition, I simply do not feel that I should be in the de facto position of granting prosecutorial discretion when the Department has made it clear that it does not wish to do so. In other words, prosecutorial discretion means prosecutorial discretion, and not judge discretion. I am advised that there is no issue of any material fact, and I, therefore, enter the following order.

ORDER

IT IS HEREBY ORDERED that the application for administrative closure is denied.

IT IS FURTHER ORDERED that the respondent be given the benefit of voluntary departure by July 29, 2013, upon the posting of a \$500 voluntary departure bond, with an alternate order of removal to El Salvador.

IT IS FURTHER ORDERED that the voluntary departure advisals are

provided herewith, and incorporated herein by reference.

Please see the next page for electronic

signature

Date: May 28, 2013
Seattle, Washington

KENNETH JOSEPHSON
Immigration Judge

Immigrant & Refugee Appellate Center | www.irac.net

//s//

Immigration Judge KENNETH JOSEPHSON

josephsk on August 8, 2013 at 3:32 PM GMT

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