



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: Z [REDACTED], M [REDACTED] J [REDACTED]

A [REDACTED]-737

Date of this notice: 3/12/2019

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:
Adkins-Blanch, Charles K.

Handled by
User team: Docket

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Falls Church, Virginia 22041

File: A █████ -737 – Oakdale, LA

Date:

MAR 12 2019

In re: M █████ J █████ Z █████

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Frank Hwu, Esquire

APPLICATION: Remand

The respondent, a native and citizen of China, has appealed from the Immigration Judge's order dated October 5, 2018. The Immigration Judge found the respondent had not submitted his application for relief from removal within the time prescribed, found the application abandoned, and ordered him removed. On appeal, the respondent requests remand of the record of proceedings. The record will be remanded.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). This Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent's attorney argues that the Immigration Judge erred in denying the respondent a short continuance to enable him to file an application for asylum, withholding of removal, and protection under the Convention Against Torture. The respondent's attorney did not acknowledge his own responsibility with regard to the filing of that application.

At the hearing on September 6, 2018, the detained respondent appeared via televideo (Tr. at 5). Because of a malfunctioning phone, the proceedings were not translated into the respondent's native language (Tr. at 7, 9). The Immigration Judge and the respondent's attorney discussed removability (Tr. at 9-12). The respondent's attorney said he was working on an application (Form I-589) and needed more time to submit the documents. The Immigration Judge said they would discuss the application again at the next hearing (Tr. at 12-13).

On October 5, 2018, the proceedings again were not translated into the respondent's native language (Tr. at 15). The Immigration Judge noted that there was no application in the record (Tr. at 16). The respondent's attorney first said that it had been mailed to the Immigration Court (Tr. at 16-17). Then, the respondent's attorney said that the respondent was supposed to file it himself (Tr. at 17). Then, the respondent's attorney said that, even though his notice of representation (Form EOIR-28) said that he represented the respondent for all purposes, he really only had intended to represent him for bond proceedings. He then asked to be allowed to withdraw and the Immigration Judge did not grant this request (Tr. at 17-18).

The Immigration Judge indicated he was going to find all relief abandoned (Tr. at 18-19). The respondent's attorney then asked for a short continuance to allow the respondent to file the application. The Immigration Judge asked if he had discussed the application with the respondent, and the respondent's attorney said he had not. The attorney thought the hearing was going to be a bond redetermination hearing (Tr. at 18-19). The Immigration Judge told the respondent's attorney that he was responsible for filing the application. He noted that he had been the attorney of record since August 28, 2018, the application for relief was due, and he did not submit it (Tr. at 20-21). The Immigration Judge found all relief abandoned and ordered the respondent removed (Tr. at 22-23).

An alien who faces removal is entitled to a full and fair removal hearing. In order to establish that his due process rights were violated, the respondent must prove (1) that there was an error and (2) that he was prejudiced by the error. *See Matter of D-*, 20 I&N Dec. 827, 831 (BIA 1994); *Matter of Santos*, 19 I&N Dec. 105, 107 (BIA 1984); *Matter of Exilus*, 18 I&N Dec. 276, 278 (BIA 1982). The alien has a fundamental right to participate meaningfully in the removal proceedings by having them competently translated into a language he can understand. *See Matter of D-*, 20 I&N Dec. at 832; *Matter of K-L-*, 20 I&N Dec. 654, 660 (BIA 1993); *Matter of Santos*, 19 I&N Dec. at 110; *Matter of Exilus*, 18 I&N Dec. at 280-81. Because two of the hearings were not translated, the respondent was not able to meaningfully participate in the proceedings.

Next, we recognize that when an application is not filed within the time set by the Immigration Judge, the opportunity to file that application may be deemed abandoned. *See* 8 C.F.R. § 1003.31(c); *Matter of R-R-*, 20 I&N Dec. 547 (BIA 1992). However, in this case, the Immigration Judge did not clearly indicate on the record that the respondent's attorney should file the application on or before October 5, 2018 (Tr. at 12-13).

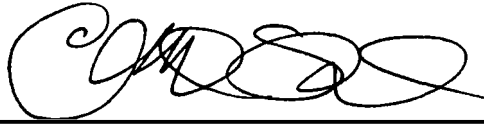
In addition, we recognize that the respondent's attorney asked for a short continuance to enable the respondent to file the application (Tr. at 18-19). An Immigration Judge may grant a continuance where good cause is shown. *See* 8 C.F.R. §§ 1003.29, 1240.6; *Matter of L-A-B-R- et al.*, 27 I&N Dec. 405 (A.G. 2018). *See also Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009). However, that continuance was denied (Tr. at 19-20).

The respondent has been detained throughout these proceedings. He hired an attorney to represent him in these proceedings. The two hearings at issue were not translated into a language he could understand, so he was not able to understand what transpired. In light of the fact that the Immigration Judge did not make it clear that the Form-I-589 would be deemed abandoned if not filed by October 5, 2018, and that the Immigration Judge denied a request for a 2-day continuance to file the form, we find it appropriate to remand the record to the Immigration Judge to have the respondent's attorney submit the promised application to the Immigration Judge.

Accordingly, the following orders will be entered.

ORDER: The motion will be granted.

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



FOR THE BOARD