



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: P [REDACTED]-V [REDACTED], A [REDACTED] M [REDACTED] A [REDACTED]-038

Date of this notice: 9/11/2020

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:
Liebowitz, Ellen C
Morris, Daniel
Malphrus, Garry D.

Murphy
User team: Docket

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RC

Falls Church, Virginia 22041

File: A-██████-038 – Brownsville, TX

Date: **SEP 11 2020**

In re: A-██████ M-██████ P-██████ V-██████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ramon Luis Roque, Esquire

ON BEHALF OF DHS: Iris G. Bravo
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated March 10, 2020, denying her timely motion to reopen proceedings. The Department of Homeland Security ("DHS") has filed a motion for summary affirmance. The proceedings will be reopened, and the record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

In a decision dated January 10, 2020, an Immigration Judge denied the respondent's applications for relief and ordered her removed to Honduras. The respondent did not appeal that decision. However, on February 18, 2020, the respondent filed a motion to reopen, asserting that, whereas previously she had filed an asylum claim in the same proceedings as her mother, she is now an unaccompanied minor who wishes to pursue her asylum claim under the provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TPVRA"). The respondent's motion asserted that, after she witnessed an attempted kidnapping and rape in a camp in Matamoros, Mexico, she decided to present herself at the United States without her mother, and independently seek asylum (Motion at 2). The motion also asserted that she did not understand her previous asylum proceedings, and in any event was emotionally traumatized and not fully able to discuss past events in Honduras.

On March 6, 2020, the respondent submitted supplemental evidence in support of her motion. The supplemental evidence is a six-page psychological assessment of the respondent, detailing a new diagnosis of the respondent with PTSD and explaining her previous inability to testify on her own behalf. The Immigration Judge's decision states that the motion was not accompanied by evidentiary material. However, we agree with the respondent that the six-page assessment had been filed.

Moreover, the Immigration Judge noted that the respondent did not submit documentation that she was now an “unaccompanied child.” The Immigration Judge correctly noted that assertions by counsel in a motion are not evidence (IJ at 1). However, it does not appear that as the respondent argues on appeal, the DHS objected to this designation of the respondent’s status as an “unaccompanied child” and if so the significance of this to whether to reopen these proceedings. On remand the Immigration Judge should now consider whether there is evidence in the record.

Having reviewed the parties’ submissions, including the evidence submitted on appeal, we find it appropriate to reopen these proceedings sua sponte and remand this matter to the Immigration Court for consideration of the respondent’s applications for relief. *See* 8 C.F.R. § 1003.2(a). On remand, both parties shall be permitted to supplement the evidentiary record and present additional legal arguments. In remanding, we express no opinion on the ultimate outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). The following orders will be entered.

ORDER: The removal proceedings are reopened sua sponte.

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



FOR THE BOARD