U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 20530

Zaidi, Zaheer, Esq.
Attorney at Law
9100 Southwest Freeway, Suite 235
Houston, TX 77074

DHS/ICE Office of Chief Counsel - CHI
525 West Van Buren Street
Chicago, IL 60607

Name: MALIK, AHMED NADEEM

A 092-006-532

Date of this notice: 12/17/2013

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:
Creppy, Michael J.
Liebowitz, Ellen C
Mullane, Hugh G.

Userteam: Docket

File: A092 006 532 – Chicago, IL

Date: DEC 17 2013

In re: AHMED NADEEM MALIK

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Zaheer Zaidi, Esquire

ON BEHALF OF DHS: Minnie D. Yuen
Assistant Chief Counsel

APPLICATION: Termination; reconsideration

The respondent appeals from the Immigration Judge's decision dated November 9, 2012, denying his motion to reconsider the Immigration Judge's decision terminating proceedings. The removal proceedings will be reinstated, and the record will be remanded to the Immigration Judge for further proceedings. The respondent's request for oral argument is denied. 8 C.F.R. § 1003.1(e)(7).

We review for clear error the findings of fact made by the Immigration Judge. 8 C.F.R. §1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent adjusted to lawful permanent resident status on December 1, 1990. Such status was rescinded by the government on February 25, 1995. The DHS filed a Notice to Appear on June 12, 2010, and the Immigration Judge granted the DHS's motion to terminate proceedings without prejudice on August 6, 2012. On September 4, 2012, the respondent filed a motion to reconsider and re-asserted a challenge to the 1995 rescission of his lawful permanent resident status. On November 9, 2012, the Immigration Judge issued the decision currently before us, which denied the respondent's motion to reconsider.

The Immigration Judge denied the respondent's motion to reconsider the termination of proceedings after concluding that "proceedings have been properly terminated, the proper venue for the respondent's argument [challenging the rescission of his lawful permanent resident status] is the USCIS" (I.J. at 1-2). On appeal, the respondent argues that the rescission of his lawful permanent resident status is reviewable in removal proceedings, and that the termination of proceedings "effectively deprived the Respondent of a forum for review of USCIS' illegal rescission order."

Once jurisdiction vests with the Immigration Judge, neither party can compel the termination of proceedings without a proper reason for the Immigration Judge to do so. *See Matter of W-C-B-*, 24 I&N Dec. 118, 122 (BIA 2007) (stating that once jurisdiction vests with an Immigration Judge, a notice to appear cannot be cancelled by the DHS, which must instead move for

dismissal of the matter on the basis of a ground set forth in the regulations); *see also* 8 C.F.R. § 239.2 (setting forth grounds on which the DHS may cancel a notice to appear); 8 C.F.R. § 1239.2(c) (setting forth grounds on which the DHS may move for dismissal); *cf. Matter of Vizcarra-Delgadillo*, 13 I&N Dec. 51 (BIA 1968) (holding that the Immigration Judge had authority to terminate proceedings as "improvidently begun" in a case where termination was reasonable and both parties agreed to the motion to dismiss). In this regard, an Immigration Judge may terminate proceedings when the DHS cannot sustain the charges or in other specific circumstances consistent with the law and applicable regulations. *See Matter of W-C-B-, supra.*

In this case, the Immigration Judge incorrectly stated that the respondent did not oppose termination of proceedings (I.J. Dec dated August 6, 2012; I.J. Dec. dated November 9, 2012, at 1-2); the respondent timely filed his opposition to the DHS's Motion to Terminate on May 14, 2012, in which he opposed the DHS's request based on his challenges to the rescission (Respondent's Opposition, filed May 14, 2012). On the record presently before us, neither the DHS's Motion to Terminate nor the Immigration Judge order dated August 6, 2012, provides a basis for termination within the scope of the regulations. 8 C.F.R. §§ 239.2, 1239.2. *See also Matter of W-C-B-, supra.* Thus, we find it appropriate to reinstate the removal proceedings and to remand this case for further proceedings as the Immigration Judge deems necessary under the circumstances, including a more complete analysis of the DHS's motion to terminate. *Id; see also Matter of A-P-*, 22 I&N Dec. 468, 473 (BIA 1999); *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994).

Accordingly, the following orders shall be entered.

ORDER: The Immigration Judge's orders are vacated, and the removal proceedings are reinstated.

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

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

LAW OFFICES OF ZAHEER ZAIDI
ZAIDI, ZAHEER
9100 SOUTHWEST FREEWAY, SIUTE 235
HOUSTON, TX 77074

Date: Nov 14, 2012

File A092-006-532

In the Matter of:
MALIK, AHMED NADEEM

_____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____.
The appeal must be accompanied by proof of paid fee ($110.00).

_____ Enclosed is a copy of the oral decision.

_____ Enclosed is a transcript of the testimony of record.

_____ You are granted until _____ to submit a brief to this office in support of your appeal.

_____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

✓ Enclosed is a copy of the order decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

_____
Immigration Court Clerk UL

cc: MICHELLE VENCI, ASST CHIEF COUNSEL(DHS)
525 W. VAN BUREN, STE 700
CHICAGO, IL 60607

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

File #: 092-006-532

Date: November 9, 2012

In the Matter of:	)	
	)	
Ahmed Nadeem MALIK,	)	IN REMOVAL PROCEEDINGS
	)	
Respondent.	)	

CHARGE: Section 237(a)(1)(A) of the Immigration and Nationality Act ("INA" or "Act") – At the time of entry or adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who seek to procure, or have sought to procure, or who have procured a visa, other documentation, or admission into the United States, or other benefit provided under the Act, by fraud or by willfully misrepresenting a material fact, under INA § 212(a)(6)(C)(i).

APPLICATION: Motion to Reopen/Reconsider

ON BEHALF OF THE RESPONDENT:
Zaheer Zaidi
Attorney at Law
9100 Southwest Freeway, Suite 235
Houston, Texas 77074

ON BEHALF OF THE GOVERNMENT:
Minnie Yuen
Assistant Chief Counsel
Department of Homeland Security
525 West Van Buren Street, Suite 701
Chicago, Illinois 60607

DECISION OF THE IMMIGRATION JUDGE

The Court will deny the respondent's motion to reopen/reconsider for the following reasons.

I. BACKGROUND

The respondent is a male native and citizen of Pakistan. His status was adjusted to that of a lawful permanent resident on December 1, 1990, under INA § 210 as a special agricultural worker. On February 25, 1995, the former Immigration and Naturalization Service rescinded the

respondent's status after determining that he procured the status by fraud or by willfully misrepresenting a material fact, to wit: having entered the United States with a Form I-551, Permanent Resident Card, which he was not entitled to. *See* Exh. 1 (NTA).

On June 12, 2010, the Department of Homeland Security ("DHS" or "Government") initiated removal proceedings against the respondent by filing a Notice to Appear ("NTA") with the Chicago Immigration Court, alleging the above facts and charging him with removability under INA § 237(a)(1)(A). *See* Exh. 1 (NTA). Thereafter, the respondent, through counsel, filed a motion to change venue to the Houston Immigration Court, which this Court denied because the respondent contested his removability and the DHS's prosecution could be compromised by changing venue to a distant location. *See* Exh. 2 (respondent's motion to change venue); Exh. 3 (respondent's written pleadings); Exh. 4 (DHS's response to respondent's motion to change venue).

The respondent appeared for master calendar hearings before the Chicago Immigration Court on November 1, 2011, and May 1, 2012, at which he confirmed his desire to contest removability. An individual merits hearing was scheduled on the issue of removability for January 12, 2015. On May 1, 2012, the DHS filed a motion to terminate proceedings without prejudice, which I granted on August 6, 2012.

On September 4, 2012, the respondent, through counsel, filed the instant motion to reopen/reconsider, claiming that his proceedings should be reopened by virtue of his opposition to the DHS's motion to terminate and because he desires to challenge the rescission of his lawful permanent resident status. The DHS opposes the respondent's motion to reopen/reconsider, contending that his proceedings were properly terminated and his arguments regarding the propriety of the rescission of his lawful permanent resident status should be raised to the United States Citizenship and Immigration Services (USCIS).

II. ANALYSIS

A. *Motion to Reconsider*

"A motion to reconsider is a 'request that the Board reexamine its decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked.'" *Matter of Ramos*, 23 I&N 336, 337 (BIA 2002) (quoting *Matter of Cerna*, 20 I&N Dec. 399, 402 n.2 (BIA 1991)). Either party may file one motion to reconsider within thirty days of the entry of a final order. The motion must specify the errors of law or fact in the Immigration Judge's prior decision and be supported by pertinent authority. INA § 240(c)(6); 8 C.F.R. § 1003.23(b)(2).

In the present case, the respondent argues that his proceedings should be reopened because he opposes termination. After commencement of proceedings, the government may move for dismissal for any of the grounds set out in 8 C.F.R. § 239.2(a). *See* 8 C.F.R. § 1239.2(c). The DHS moved to terminate proceedings under this provision, and the respondent has not raised any

argument regarding an error in termination.[1] Instead, the respondent argues that the decision rescinding his lawful permanent resident status was in error. However, as proceedings have been properly terminated, the proper venue for the respondent's argument is the USCIS. *See* 8 C.F.R. § 103.5(a)(1)(i); *Estrada v. Holder*, 604 F.3d 402 (7th Cir. 2010) (alien filed a motion to reopen a recision order with the USCIS).

B. *Motion to Reopen*

An alien may file one motion to reopen within ninety days of the entry of a final order. The motion should present evidence that is (1) material, (2) was unavailable at the time of the original hearing, and (3) could not have been discovered or presented at the original hearing. INA § 240(c)(7); 8 C.F.R. § 1003.23(c)(1).

In the present case, the respondent has not presented any material evidence that was unavailable and could not have been discovered or presented at the time of the original hearing that is relevant to the issue of termination in his case. To the contrary, the respondent has repeated his argument that the rescission of his lawful permanent resident status was improper and submitted the same supporting evidence that was already in the record. However, as already noted above, because proceedings have been properly terminated, the proper venue for the respondent's argument is the USCIS. While this Court cannot force the DHS to pursue the respondent's removal, it can encourage the agency to give careful consideration to the respondent's case and allow him an opportunity to contest the validity of the rescission order. He has presented substantial evidence demonstrating that he was not properly notified of the rescission proceedings in compliance with the requirements of 8 C.F.R. §§ 246.1 and 103.5a(a)(2). *See Estrada v. Holder*, 604 F.3d 402 (7th Cir. 2010).

Accordingly, the following order shall be entered:

ORDER

IT IS HEREBY ORDERED that the respondent's motion to reopen/reconsider be DENIED.

CRAIG M. ZERBE
IMMIGRATION JUDGE

[1] Notably, the respondent specifically requested termination of proceedings in his written pleadings. *See* Exh. 3.