



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: A [REDACTED] M [REDACTED] W [REDACTED] A [REDACTED]-560

Date of this notice: 12/23/2016

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:  
O'Herron, Margaret M  
Greer, Anne J.  
Kendall-Clark, Molly

cc: [REDACTED]

Userteam: Docket

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*mg*

Falls Church, Virginia 22041

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File: A [REDACTED] 560 – Charlotte, NC

Date: **DEC 23 2016**

In re: W [REDACTED] L [REDACTED] A [REDACTED] M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Earnest N.G. Bailey, Esquire

ON BEHALF OF DHS: Hilary Rainone  
Assistant Chief Counsel

APPLICATION: Continuance

On February 1, 2016, the Immigration Judge denied the respondent's motion for a continuance and ordered the respondent removed. The respondent has appealed from the Immigration Judge's order. The Department of Homeland Security (DHS) has filed a motion for summary affirmance. The record will be remanded.

We review an Immigration Judge's factual determinations for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, judgment, and all other issues in appeals from the decisions of Immigration Judges. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent sought a continuance of removal proceedings to await a decision in State Court on a child custody order, which she needed to support a Form I-360 petition for special immigrant juvenile status. A grant of special immigrant juvenile status would allow her to apply for adjustment of status to that of a lawful permanent resident. *See* sections 101(a)(27)(J) and 245(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(27)(J), 1255(h). The complaint filed in State Court alleged that the respondent's mother abandoned the respondent and that reunification with the mother was not viable. *See* section 101(a)(27)(J) of the Act.

The Immigration Judge denied the respondent's motion for a continuance after concluding that allegations in the State Court complaint were not true. The Immigration Judge based his conclusion on inconsistencies between the allegations in the State Court complaint and the Form I-213 (Record of Deportable/Inadmissible Alien) that was completed by an immigration officer at the border when the respondent arrived in the United States. Specifically, the Form I-213 provided that the respondent's mother resided in Raleigh, North Carolina and had paid a smuggler to assist the respondent travel to the United States. The Form I-213 also included a statement that the respondent anticipated that her mother, who was in Raleigh, would support her. In contrast, the State Court complaint alleged that the respondent's mother had moved to California in 2009 or prior to that date, that she had married another man and had two children with him, and that she did not maintain a parent-child relationship with the respondent once she moved to California.

When questioned about the inconsistencies, the respondent's counsel explained that he had investigated the respondent's situation and had learned that the respondent's mother had been in California for some years and that she had another family there (Tr. at 10). The Immigration Judge, however, asserted that the respondent's counsel had committed an ethical violation by filing the State Court complaint and by misleading the State Court judge (Tr. at 11-15). The Immigration Judge found that the complaint pending in State Court was defective ab initio and would render any subsequent Form I-360 petition to be not prima facie approvable (I.J. at 15). The Immigration Judge inquired as to whether the respondent sought pre-conclusion voluntary departure or wanted to accept an order of removal (I.J. at 15-16). The respondent declined to seek voluntary departure, and the Immigration Judge ordered the respondent removed (I.J. at 16-17). The respondent then filed her appeal.

On appeal, the respondent argues that the Immigration Judge should have granted her motion for a continuance to allow her to pursue special immigrant juvenile status and then adjustment of status. The respondent also argues that the Immigration Judge did not provide her with a reasonable opportunity to present her claims.

An Immigration Judge may grant a continuance where good cause is shown. *See* 8 C.F.R. § 1240.6; *see also Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009). We agree with the respondent that she was not given the opportunity to fully present her claim that there was good cause for a continuance. *See Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014). There was no opportunity for the respondent to challenge the Form I-213 and she was given no chance to highlight the document's inconsistencies, which she has done in her appeal brief.

For example, the respondent's parents are initially described as having addresses in Honduras. Later, the father is reported as living at 3445 Misty River, North Carolina 27610, while the mother is described as living in Raleigh, North Carolina. Notwithstanding these addresses, the respondent is reported as saying that the person she is to contact once in the United States is her father, who is described as living in Raleigh. The Form I-213 additionally contains conflicting information about which parent arranged for the respondent to be smuggled into the United States, and the Form I-213 describes the respondent herself with a male pronoun. Other concerns about the Form I-213 are that the respondent was unaccompanied and only 14 years old when she provided information to the immigration officer who prepared the form. Finally, as noted on appeal, the Form I-213 lists a different agent in charge of the document/information than the EARM database record, even though the EARM database record was reported at the respondent's hearing as containing the same information as the Form I-213 (Tr. at 8-9).

The Immigration Judge denied the motion for a continuance based on certain statements on the Form I-213, but without actually considering the document as a whole or any argument concerning the document. Nor did the Immigration Judge consider the Form I-830 in the record, which showed that when the respondent was released from custody, she reported her address as c/o Armando Alvarado Herrera (Father) at 3613 Flowing Ct. #12, Raleigh, NC 27610. Thus, the

Immigration Judge denied the motion for a continuance without fully considering the record.<sup>1</sup> In light of the foregoing considerations, we conclude that a remand for additional consideration of whether the respondent can establish good cause for further continuance of these proceedings to permit her to pursue special immigrant juvenile status is appropriate.

As a final matter, the respondent has raised concerns about the fairness of the proceedings, which we find supported by the record (Respondent's Br. at 18-23; Tr. at 12-15). *See Matter of Y-S-L-C-*, 26 I&N Dec. 688 (BIA 2015) (providing that all parties should expect dignity, respect, courtesy, and fairness in immigration proceedings). Accordingly, we find it appropriate to remand this matter to a different Immigration Judge. *See id.* at 690-91. However, we express no opinion concerning the ultimate outcome of this matter.

ORDER: The Immigration Judge's order is vacated.

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

  
\_\_\_\_\_  
FOR THE BOARD

<sup>1</sup> In fact, the Immigration Judge did not issue a decision setting out any reasons for his order. For purposes of this decision, we rely on the Immigration Judge's statements during the hearing, as found in the transcript of proceedings.

IMMIGRATION COURT  
5701 EXECUTIVE CENTER DR. #400  
CHARLOTTE, NC 28212

In the Matter of

Case No.: A-560

A-M L  
Respondent

IN REMOVAL PROCEEDINGS


ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 2/1/16.  
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☒ The respondent was ordered removed from the United States to HONDURAS ~~or in the alternative to~~ H.
- ☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to HONDURAS or in the alternative to .
- ☐ Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternate order of removal to HONDURAS.
- Respondent's application for:
- ☐ Asylum was ( ) granted ( ) denied ( ) withdrawn.
- ☐ Withholding of removal was ( ) granted ( ) denied ( ) withdrawn.
- ☐ A Waiver under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn.
- ☐ Cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Adjustment of Status under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_.
- ☐ As a condition of admission, respondent is to post a \$ \_\_\_\_\_ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☒ Other: Motion to continue DENIED.
- Date: Feb 1, 2016

  
V. STUART COUCH  
Immigration Judge

R  
Appeal: Waived/Reserved Appeal Due By: