



**U.S. Department of Justice**

Executive Office for Immigration Review

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Name: V [REDACTED]-V [REDACTED], M [REDACTED] ... A [REDACTED]-608

**Date of this notice: 6/15/2020**

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:  
Pepper, S. Kathleen

Userteam: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED]-608 – Houston, TX

Date:

JUN 15 2020

In re: M [REDACTED] N [REDACTED] V [REDACTED]-V [REDACTED]

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENT: Johanna Cochran, Esquire

The respondent has filed an interlocutory appeal from an Immigration Judge's November 15, 2018, denial of the respondent's motion to terminate proceedings. On appeal, the respondent argues that jurisdiction over these proceedings did not vest with the Immigration Court because the Department of Homeland Security (DHS) did not properly commence these proceedings under 8 C.F.R. § 1003.14(a). Ordinarily the Board does not entertain interlocutory appeals. *See Matter of M-D-*, 24 I&N Dec. 138, 139 (BIA 2007), and cases cited therein. However, we will accept this interlocutory appeal and remand the record to the Immigration Court. *See Matter of M-D-*, 24 I&N Dec. 138, 139 (BIA 2007), and cases cited therein.

On March 15, 2018, the DHS in McAllen, Texas, issued a Form I-862, Notice to Appear (NTA) against the then-11-year-old unaccompanied respondent, and filed the NTA with the Immigration Court in Houston, Texas. A month later, the respondent was released from the custody of the Office of Refugee Resettlement (ORR). Upon her release, the respondent filed a motion to change venue with the Immigration Court in Houston, and moved to Norcross, Georgia, to live with her mother.<sup>1</sup> On August 6, 2018, the Houston Immigration Court sent the respondent a notice of a September 27, 2018, hearing. On August 28, 2018, the DHS in Atlanta, Georgia, issued a second NTA against the respondent.<sup>2</sup> This second NTA ordered the respondent to appear before an Immigration Judge in Atlanta, Georgia, on October 31, 2018.<sup>3</sup> On September 27, 2018, the Immigration Judge in Houston convened a hearing, at which the respondent was not present, and ordered the respondent removed in absentia. The respondent moved to rescind the removal order and terminate the proceedings. On November 15, 2018, the Immigration Judge in Houston granted the respondent's motion to rescind but denied her motion to terminate, which is the matter now before this Board on appeal. At the request of the DHS and during the pendency of this appeal,

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<sup>1</sup> The Board's electronic records do not indicate that the Immigration Court in Houston ruled upon the respondent's motion to change venue.

<sup>2</sup> The record before this Board, which is a copy of the record of proceedings, does not include this NTA. However, a copy of it has been provided by the respondent.

<sup>3</sup> According to the respondent, no hearing was convened on that date. This appears consistent with the Board's electronic records which do not indicate that a hearing was held or scheduled on that date.

the Immigration Judge in Houston changed the venue of these proceedings to Atlanta, Georgia, where a hearing is scheduled for January 18, 2022.

As pointed out by the respondent on appeal, the DHS has filed two concurrent NTAs against her in two different Immigration Courts. It is unclear from this record, however, which NTA governs these proceedings, and upon which the DHS seeks to rely in pursuing the removal of the respondent. There is nothing in this record to indicate that the first NTA was dismissed before the DHS proceeded with the issuance of the second NTA, or that at any time during these proceedings the DHS moved to dismiss one of the charging documents as improvidently issued. *See* 8 C.F.R. §§ 239.2, 1239.2. Although served with the respondent's Notice of Appeal (Form EOIR-26), and a Board notice acknowledging the filing of this interlocutory appeal, no response from the DHS has been received by the Board.

Accordingly, we will remand the record to the Immigration Court to determine which NTA governs in this case. On remand, the Immigration Judge will have a further opportunity to rule on the respondent's motion to terminate, if necessary.<sup>4</sup>

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this decision.

*JKP*

FOR THE BOARD

<sup>4</sup> This matter is before the Board on an appeal from a decision of the Immigration Court in Houston, Texas. Therefore, the record will be remanded there. In so doing, we are aware that, during the pendency of this appeal, the Immigration Court in Houston changed the venue of the hearing to Atlanta, Georgia. This decision should not be interpreted as suggesting that a particular Immigration Court must render the determination that we consider is necessary in these proceedings, but only that such a determination should be made.