



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: M [REDACTED], N [REDACTED] E [REDACTED]

A [REDACTED]-019

Date of this notice: 12/30/2019

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:
Kendall Clark, Molly
Guendelsberger, John
Grant, Edward R.

Userteam: Docket

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22

Falls Church, Virginia 22041

File: A-019 – Lumpkin, GA

Date:

DEC 30 2019

In re: N-E-M

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Terence T. Taniform, Esquire

APPLICATION: Reopening; reconsideration

The respondent, a native and citizen of Cameroon, has appealed from the Immigration Judge's written decision, dated July 2, 2019, denying his motion to reopen and reconsider the Immigration Judge's May 30, 2019, order.¹ The Immigration Judge's May 30, 2019, order deemed the respondent's applications for asylum and related relief abandoned, and ordered the respondent removed to Cameroon. The record before us does not contain a brief from the Department of Homeland Security (DHS) in opposition to the appeal. For the reasons set out below, the respondent's appeal will be sustained; the Immigration Judge's decisions dated May 30, 2019, and July 2, 2019, will be vacated; and the record will be remanded to the Immigration Judge for further proceedings and the issuance of a new decision.

We review an Immigration Judge's findings of fact, including credibility determinations, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We agree with the respondent that the Immigration Judge erred in denying his motion and treating his asylum application as abandoned (*see* Respondent's Appeal Br. at 3-4, 7, 10). On April 25, 2019, the Immigration Judge granted the respondent's request for a continuance and instructed the respondent to file his Form I-589 application with the Immigration Court on or before May 30, 2019, otherwise the application would be deemed abandoned (IJ at 2). On May 30, 2019, the Immigration Judge deemed the respondent's Form I-589 application abandoned because the Immigration Court had not yet received the application, and the respondent's counsel was unwilling to provide the Immigration Court with a draft Form I-589 application during the hearing (IJ at 2).

However, in support of his motion, the respondent submitted shipping receipts, which indicate that the Form I-589 application, along with other documents, were delivered to the detention center in Lumpkin, Georgia, in a timely manner on May 25 and 28, 2019 (Motion to Reopen and Reconsider at 6-7, 10-11, Exh. C). Given that the Immigration Court is located in this detention center, we will treat the Form I-589 application as having been filed in a timely manner with the Immigration Court and not abandoned. We also observe that DHS has not filed a brief in

¹ The Board grants the respondent's motion to consider a late-filed brief based on the representations of counsel regarding the unfortunate passing of his father.

opposition on appeal or in the proceedings below. Consequently, the respondent's appeal will be sustained and the record will be remanded to the Immigration Judge so the respondent can pursue applications for asylum, withholding of removal, and protection under the Convention Against Torture. On remand, the parties will be permitted to submit arguments and evidence pertinent to the respondent's applications for relief. According, the following orders are entered.²

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decisions dated July 2, 2019, and May 30, 2019, are reversed and vacated.

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



FOR THE BOARD

² Because we have disposed of this case on the grounds above, we need not address other issues raised by the respondent. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.") (citations omitted)