



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**Name: [REDACTED] M [REDACTED], N [REDACTED]
Riders: [REDACTED]**

A [REDACTED]-918

Date of this notice: 10/24/2018

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:
Adkins-Blanch, Charles K.
Geller, Joan B
Snow, Thomas G

User team: Docket

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DX

Falls Church, Virginia 22041

Files: [REDACTED]-918 – Charlotte, NC
[REDACTED]
[REDACTED]

Date: **OCT 24 2018**

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

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENTS: Cynthia E. Everson, Esquire

ON BEHALF OF DHS: Melissa Lanning
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture; remand

The respondents appeal from the Immigration Judge's October 12, 2017, decision rejecting the lead respondent's application for asylum as incomplete and abandoned, and ordering the respondents removed to Mexico.¹ The Department of Homeland Security filed a brief in opposition to the appeal. The appeal will be sustained, and the record will be remanded for further proceedings and the entry of a new decision.

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

On appeal, the respondent argues that the Immigration Judge abused his discretion when he rejected the respondent's application for asylum, withholding of removal, and protection under the Convention Against Torture (Respondent's Br. at 3-5). The respondent also argues that the Immigration Judge erred in finding that there was no good cause to continue the proceedings (*Id.* at 5-7).

At the group master calendar hearing held on July 7, 2017, the Immigration Judge provided the respondent with a Form I-589 application for relief, advised the respondent that her application must be filed by the next hearing with copies for the DHS and herself, and indicated that if she did not provide a copy to DHS, her application may be deemed abandoned (IJ at 1-2; Tr. at 17-18).

¹ The respondents are a mother and her minor children. The mother is the lead respondent. Her children are derivative applicants on her application for asylum. References to the singular respondent refer to the lead respondent.

On October 12, 2017, the respondent appeared in Immigration Court with only one copy of her asylum application. She did not have a copy of her application to provide to the DHS. When she was asked whether she had a copy of her application for the DHS, she stated that she “forgot to get a copy” (IJ at 2; Tr. at 24).

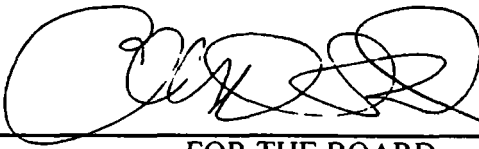
The Immigration Judge rejected the respondent’s asylum application for failure to include a copy for the DHS, and ordered the respondent and her accompanying children removed (IJ at 2). See 8 C.F.R. §§ 1003.31(c); 1208.3(c)(2), (3). The Immigration Judge found that the “Court was not provided with good cause to continue the proceedings” (IJ at 2). However, the Immigration Judge did not advise the respondent that she could request a continuance for good cause shown or consider a brief recess to enable the pro se applicant to make a copy of her asylum application (Tr. at 25).

The Immigration Judge did not grant the respondent a brief recess to make a copy of the application, and deemed the respondent’s asylum application abandoned. Considering the totality of the circumstances, including the oral instructions given at a group master calendar hearing, the pro se respondent, and the available remedy of a brief recess to make a copy, the Immigration Judge’s decision to deem the application abandoned is not appropriate. See *Matter of Interiano-Rosa*, 25 I&N Dec. 264, 266 (BIA 2010) (when an application for relief is timely filed but supporting documents are not submitted within the time established, the Immigration Judge may deem the opportunity to file the documents to be waived but may not deem the application itself abandoned) citing *Casares-Castellon v. Holder*, 603 F.3d 1111, 1113 (9th Cir. 2010) (holding that the plain language of 8 C.F.R. § 1003.31(c) does not permit deeming a timely filed application abandoned for failure to file supplemental documents within a specified time). We will remand record to the Immigration Judge to provide the respondents an opportunity to resubmit the required copies of her asylum application.

Accordingly the following orders will be entered.

ORDER: The appeal is sustained.

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



FOR THE BOARD