



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 22041

**DIA, AMADOU MOCKHTAR
68121-054/A093-433-947
C/O MSCI
555 GEO DRIVE
PHILIPSBURG, PA 16866**

**DHS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402**

Name: DIA, AMADOU MOCKHTAR

A 093-433-947

Date of this notice: 10/29/2015

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:
Grant, Edward R.

2015-10-29
User team: Docket

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Falls Church, Virginia 22041

File: A093 433 947 – York, PA

Date: **OCT 29 2015**

In re: AMADOU MOCKHTAR DIA a.k.a. Mocktou LNU a.k.a. Amadou Mocktou Dia
IN REMOVAL PROCEEDINGS
APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: William E. Lore
Senior Attorney

The respondent, a native and citizen of Senegal, has appealed from the Immigration Judge's decision, dated July 14, 2015, ordering his removal from the United States to Senegal. The Department of Homeland Security ("DHS") has filed a motion for summary affirmance of the Immigration Judge's decision. The record will be remanded to the Immigration Judge for further proceedings.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. See 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent argues on appeal that the Immigration Judge did not properly advise him of potential forms of relief available to him. Specifically, the respondent argues he may be eligible for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h). The respondent avers that he is married to a United States citizen or a lawful permanent resident. The record reflects that he entered the United States on a visitor visa and then adjusted his status to that of a conditional permanent resident (Exh. 1). Considering the evidence and the respondent's statements on appeal, the respondent may be eligible for relief under section 212(h) of the Act. See *Matter of J-H-J*, 26 I&N Dec. 563 (BIA 2015) (holding that an alien who adjusts status to lawful permanent residence in the United States is not precluded from seeking a waiver under 212(h) in conjunction with an application for adjustment of status due to an aggravated felony conviction). We agree that the Immigration Judge did not sufficiently advise the respondent of potential forms of relief available to him. See 8 C.F.R. § 1240.11(a)(2). In light of the foregoing, the record will be remanded for the Immigration Judge to advise the respondent of any forms of relief that may be available to him and to consider his eligibility for such relief. Accordingly, the following order will be entered.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
YORK, PENNSYLVANIA

File: A093-433-947

July 14, 2015

In the Matter of

AMADOU MOCKHTAR DIA
RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGE: 237(a)(2)(A)(iii).

APPLICATIONS:

ON BEHALF OF RESPONDENT: Pro Se

ON BEHALF OF DHS: William Lore, senior attorney

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a 51-year-old male alien native citizen of Senegal placed into removal proceedings. Personal service of a Notice to Appear, Form I-862, on May 11th, 2015; respondent was properly served the pro bono list. I gave him time to seek an attorney. He was unable to do that, so we proceeded. Respondent conceded the Allegations 1 through 6 in the Notice to Appear. As Allegation Number 6 the respondent conceded. When asked by the court if the actual loss to the victims the United States, in this case the United States Department of Education exceeded \$10,000.

Consequently, the court finds the respondent's conviction constitutes an aggravated

felony in INA 101(a)(43)(N)(i). The total loss amount according to the conviction record in Exhibit 2 indicates a total loss of \$728,123 to one victim, to the other victim \$219,218. The court in mind has misspoke concerning the victim being the United States Department of Education. I don't believe that is actually accurate, which is neither here nor there.

Respondent was asked a couple of times concerning any questions he may have had. After the court indicated he would be removed to Senegal, the respondent stated that he had no family there. He did not know anything about Senegal since he had left as a young person. Neither of those and the government counsel agrees was sufficient to trigger the court under the regulations in Board case law to inform the respondent of his right to apply for any relief including asylum, withholding of removal, and Convention Against Torture.

Accordingly based upon the foregoing, the following orders are hereby entered.

ORDERS

Respondent is hereby ordered removed to Senegal.

Please see the next page for electronic

signature

WALTER A. DURLING
Immigration Judge

//s//

Immigration Judge WALTER A. DURLING

durlingw on August 24, 2015 at 3:21 PM GMT