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

Brill, Howard R
Howard R. Brill, PC
250 Fulton Avenue
Suite 202
Hempstead, NY 11550

DHS/ICE Office of Chief Counsel - NYD
201 Varick, Rm. 1130
New York, NY 10014

Name: Z[redacted]-P[redacted], K[redacted]

A [redacted]-965

Date of this notice: 2/16/2018

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:
Greer, Anne J.
Crossett, John P.
Pauley, Roger

Userteam: Docket

File: [redacted] 965 – New York, NY Date: FEB 16 2018

In re: K[redacted] Z[redacted]-P[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Howard R. Brill, Esquire

APPLICATION: Continuance

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's August 25, 2017, decision denying his request for a continuance, finding him removable as charged, and ordering him removed from the United States. The record will be remanded.

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

The record reflects that the respondent appeared pro se at a June 9, 2016, master calendar hearing and was granted a continuance to seek counsel (IJ at 1-2; Tr. at 1). On July 31, 2017, the respondent appeared with counsel, who indicated that the respondent would be seeking Special Immigrant Juvenile ("SIJ") status (IJ at 2; Tr. at 4-6). *See* sections 101(a)(27)(J), 245(h) of the Immigration and Nationality Act, 8 C.F.R. §§ 1101(a)(27)(J), 1255(h). The respondent also provided the Court with a copy of a guardianship petition that had been filed in family court on July 20, 2017 (IJ at 2; Exh. 2).[1] The Immigration Judge reset the case for August 25, 2017, for a status update on the family court petition (IJ at 2; Tr. at 7).

On August 16, 2017, the respondent filed a motion to continue (IJ at 2). In support of the motion, he submitted a notice to appear from the family court indicating that his first hearing was scheduled for September 20, 2017 (IJ at 2).[1] On August 21, 2017, the Immigration Judge denied the motion to continue (IJ at 2). At the respondent's hearing on August 25, 2017, the respondent renewed his request for continuance (IJ at 2-3; Tr. at 10, 12). The Immigration Judge denied the request for a continuance and ordered the respondent, who admits the allegations and concedes removability as charged, removed from the United States to Honduras (IJ at 1-5).

On appeal, the respondent argues that the Immigration Judge erred by denying him a continuance to allow him to file for SIJ status and violated his due process rights to a reasonable opportunity to apply for available relief.

[1] The respondent has provided no information on appeal as to the status of his family court petition.

We conclude that the respondent established good cause for a continuance and therefore the Immigration Judge erred in denying his motion. *See* 8 C.F.R. §§ 1003.29, 1240.6 (providing that the Immigration Judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Department of Homeland Security); *see also Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012) (setting forth a framework to analyze whether good cause exists to continue proceedings to await the adjudication of an alien's pending U visa petition); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (setting forth a framework to analyze whether good cause exists to continue proceedings to await adjudication by U.S. Citizenship and Immigration Services of a pending family-based visa petition).

Here, a guardianship petition was pending in a state family court and the respondent was actively pursuing the petition at the time that he requested a continuance. We conclude that under these circumstances, a continuance was warranted. Accordingly, we will remand for the respondent to update the record with respect to the status of his guardianship petition and SIJ petition.

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

FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents and would affirm the Immigration Judge's decision for the reasons there stated. In addition, the respondent has failed to provide on appeal any information relating to the outcome of his September 20, 2017, hearing in family court so no prejudice has been shown.

Cite as: K-Z-P-, AXXX XXX 965 (BIA Feb. 16, 2018)

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

File: [redacted]965 August 25, 2017

In the Matter of

K[redacted] Z[redacted]-P[redacted]) IN REMOVAL PROCEEDINGS
)
RESPONDENT)

CHARGES: (212)(a)(06)(A)(i) (Alien in United States without admission or parole).

APPLICATION: Continuance under 8 C.F.R. 1240.

ON BEHALF OF RESPONDENT: REBECCA MEDINA

ON BEHALF OF DHS: RYAN MATSUNO

ORAL DECISION OF THE IMMIGRATION JUDGE

I. FACTUAL AND PROCEDURAL BACKGROUND

The respondent was born on April 4, 1999, and is a native and citizen of Honduras. He entered the United States at or near Calexico, California on or about February 2, 2016, without being admitted or paroled. The respondent was placed in removal proceedings on or about April 22, 2016, pursuant to the service and filing of a Notice to Appear (NTA). The NTA charges him with inadmissibility under INA Section 212(a)(6)(A)(i). The respondent previously appeared aton the non-detained New York

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docket before Judge Tsankov and Judge Christianson and this Court has reviewed the DAR fromregarding those hearings and familiarized itself with the record of proceedings.

On or about May 27, 2017, the Department of Homeland Security (Department) arrested and detained the respondent pursuant to INA Section 236(a). On or about July 21, 2017, the Court held a bond hearing and denied bond based on a finding that the respondent had failed to meet his burden, that he did not pose a danger to the community. Also onOn or about July 21, 2017, in addition, through written pleadings, the respondent, through his attorney, submitted written pleadings and admitted the factual allegations in the NTA and conceded inadmissibility. and tThe Department of Homeland Security designated Honduras as a country of removal. The respondent waived his opportunity to file applications for asylum, withholding under the INA and CAT protection, and advised the Court that he would be seeking a Special Immigrant Juvenile status. The Court reset to today for the respondent's attorney to prepare the case before the Family Court and for a status of any developments.

The Court marked the following documents into the record: Ex. 1 is the NTA; Ex. 2 is the respondent's written pleadings; Ex. 3 includes documents relating to the family court petition; and Ex. 4 is the Family Court hearing notice.

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The Court received a motion to continue proceedings on or about August 16, 2017 to a date no earlier than December 1, 2017. The Court denied this adjournment request in writing on or about August 22, 2017, and the respondent and his attorney appeared today. According to documents in the record at Exhibit 3, on or about July 19, 2017, the respondent's grandfather petitioned the Family Court of the State of New York, County of Suffolk, to be appointed as a guardian. The respondent has an initial hearing on this case on September 20, 2017, at 9 o'clock. At the hearing today, on

August 25, 2017, the motion to continue was renewed and the Department of Homeland Security opposed the motion for a continuance. For the reasons that follow, the court denies the renewed motion. ~~That is the fourth exhibit in this~~Exh. 4. ~~hearing. The Court received a motion to continue proceedings on or about August 16, 2017. The motion notes that the respondent's first hearing in Family Court is scheduled for September 20, and the respondent, through his attorney, seeks a continuance until a date no earlier than December 1. The Court denied this adjournment request in writing on or about August 22, 2017, and the respondent and his attorney appeared today.~~

~~At the hearing today, on August 25, 2017, the motion to continue was renewed and the Department of Homeland Security opposed the motion for a continuance~~.

LEGAL STANDARDS

Applications for a continuance are governed by two regulations, u~~u~~nder 8 C.F.R. section 1003.29, t~~T~~he Immigration Judge may grant a motion for continuance for good cause shown. ~~Also see~~ 8 C.F.R. Section 1240.6, ~~which~~ provides that after commencement of the hearing, the IJ may grant a reasonable adjournment ~~either at his or her own instant, or~~ for good cause shown upon application by the respondent or the Department.

Additionally the U.S. Court of Appeals for the Second Circuit (Second Circuit) has held that IJ's are given wide latitude regarding~~and~~ calendar management. See Morgan v. Gonazales, 445 F.3d 549, 552-53 (2nd Cir. 2006). The Second Circuit has stressed that IJ's should consider the Hashmi factors when considering whether good cause has been shown for continuance. 24 I&N Dec. 794 (BIA 2009). The Court assumes the Second Circuit would expect an IJ to apply the Hashmi factors, although Hashmi does specifically deal with pending Forms I-130~~'s~~ filed with U.S. Citizenship and Immigration Services (USCIS). In Hashmi, the BIA provided the following non-exhaustive factors to

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consider in determining whether good cause exists to continue proceedings~~,~~ to afford a respondent an opportunity to apply for adjustment of status premised on a pending family-based petition. This includes the DHS' position on ~~response to~~ the motion, as well as whether~~that~~ the respondent's application for adjustment may merit a favorable exercise of discretion, and the reason for the continuance or other procedural factors. Again, while this Court acknowledges that this case does not fall specifically under Hashmi, the Court will consider Hashmi in this matter.

The Court notes that the Department objects to the motion. In addition, ~~while~~ the Court cannot opine as to whether the respondent will ultimately merit a favorable exercise of discretion, or as to whether he will ultimately be able to establish his eligibility for adjustment of status, specifically because the Family Court petition has not yet been granted and the I-360 has not even been filed. Therefore, it is premature for the Court to even consider these factors, and because of that, the Court does think that the denial of the continuance is proper. The Court again notes the respondent has been in proceedings since April of 2016. The Family Court petition was not filed until the end of July 2017. The respondent has been detained since May of 2017. ~~While t~~The Court does note that the respondent's attorney has been actively working on her client's case~~,~~ ~~again,~~ However, ~~the Court finds that because~~ there is no application before the Court~~it,~~ because the family petition has not ~~even~~ been adjudicated ~~as of yet~~ and there is no way to know whether it will be granted or not~~,~~ ~~therefore there is no way to know whether~~The court cannot speculate whether the respondent will have a meritorious adjustment of status application. Based on all these factors referenced in ~~,~~ ~~even considering~~ Hashmi, ~~that~~ a continuance is not proper in this case.

The Court further notes that the respondent remains~~is~~ detained. The Court previously found that the respondent had failed to ~~establish that he did not pose a~~

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~~danger to the community.~~ the respondent has not filed any application for relief that the Court may adjudicate and that he remains detained. At a master calendar hearing in July 2017, he waived his right to file any applications other than an application that would be based on a finding of special immigrant juvenile status. In light of all these factors~~this~~, the Court does believe that a denial of the continuance is proper as there is no good cause to continue his removal proceedings with no viable application.

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ORDER

IT IS HEREBY ORDERED that the respondent's motion for a continuance be denied.

As the respondent has failed to file any applications for relief, IT IS HEREBY ORDERED that the respondent be~~is ordered~~ removed to Honduras pursuant to the charge in the Notice to Appear.

Please see the next page for electronic signature

LAUREN T. FARBER
Immigration Judge

Appeal ~~due date,~~Rights: B~~b~~oth parties have a right to appeal this decision. Any appeal is due at the Board of Immigration Appeals no later than September 25, 2017.