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

VALLECILLO-CASTILLO, HERICK JOEL
1513 SCOTT STREET, #4
SAN JOSE, CA 95126

DHS/ICE Office of Chief Counsel - CHI
525 West Van Buren Street
Chicago, IL 60607

Name: VALLECILLO-CASTILLO, HERIC... **A 200-557-547**

Date of this notice: 1/19/2017

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:
Guendelsberger, John

Userteam: Docket

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File: A200 557 547 – Chicago, IL

Date: JAN 19 2017

In re: HERICK JOEL VALLECILLO-CASTILLO

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Erin Keeley
Assistant Chief Counsel

APPLICATION: Reconsideration

The Department of Homeland Security ("DHS") moves the Board to reconsider its September 20, 2016, decision to administratively close these removal proceedings. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57-58 (BIA 2006); section 240(c)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b). The respondent has not filed a brief or statement in response to this motion. The motion will be denied.

On January 31, 2012, an Immigration Judge ordered the respondent's removal in absentia, and the respondent filed a motion to reopen and rescind the in absentia order. The Immigration Judge granted the motion on February 5, 2015, and the DHS filed a timely motion to reconsider.[1] On March 3, 2015, the Immigration Judge granted the motion to reconsider and denied the respondent's motion to reopen and rescind the in absentia order. The respondent appealed the March 3, 2015, decision to this Board.[2] While the appeal remained pending, the respondent filed a motion to hold the appeal in abeyance pending the adjudication of an application for derivative asylum status. We construed the motion as a motion for administrative closure. On September 20, 2016, we granted the motion and administratively closed the proceedings.

In the instant motion, the DHS does not argue that we incorrectly applied the standards for evaluating when administrative closure is appropriate as set forth in *Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012). Instead, the DHS essentially argues that we lacked the authority to administratively close the proceedings in this case because "the Immigration Judge issued a final order [of] removal, terminating the proceedings." *See* DHS Motion at 2. The DHS further asserts that "[w]ithout a stay of execution of the removal order, the [DHS] is entitled to remove

[1] The respondent claimed that he did not receive proper notice of the hearing and he also sought reopening to apply for asylum and related relief based on his sexual orientation.

[2] The respondent also moved the Immigration Judge to reconsider her March 3, 2015, decision, and on April 12, 2015, the Immigration Judge denied the motion to reconsider.

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the respondent from the United States even if the Board has administratively closed proceedings." *Id.*, at 2-3.

We find no error of law in our decision to administratively close these proceedings. Initially, we emphasize that the Immigration Judge issued an in absentia order of removal. The Immigration Judge did not terminate these proceedings. Indeed, the issue of whether the respondent was properly ordered removed in absentia remains under contention. We also emphasize that the respondent's appeal was properly before the Board, and that the Board has the authority, delegated by the Attorney General, to administratively close removal proceedings in appropriate situations. *See Matter of Avetisyan, supra*, at 691; 8 C.F.R. § 1003.1(d)(1).

Further, the DHS is not entitled to remove the respondent from the United States at this time. Administrative closure is used to temporarily remove a case from the Board's docket, and does not result in a final Board order. *See Matter of Munoz-Santos*, 20 I&N Dec. 205 (BIA 1990); *Matter of Amico*, 19 I&N Dec. 652, 654 n. 1 (BIA 1988). A stay of removal is not necessary or required pending the Board's final order on the merits of the respondent's appeal in this case. Moreover, an order of removal shall not be executed during the time allowed for an appeal from an Immigration Judge's decision denying a motion to reopen or reconsider filed pursuant to the provisions of 8 C.F.R. § 1003.23(b)(4)(iii) (order entered in absentia). *See* 8 C.F.R. §§ 1003.6(a), (b).

In sum, we are not persuaded that we erred as matter of law or fact in ordering the administrative closure of these proceedings.[3] Accordingly, the motion by the DHS for reconsideration of the Board's September 20, 2016, decision will be denied.

ORDER: The motion to reconsider is denied.

FOR THE BOARD

[3] In our prior order, we erroneously stated that the respondent is a native and citizen of Mexico. The Notice to Appear, however, alleges that the respondent is a native and citizen of Honduras. This error does not alter our decision.

Cite as: Herick Joel Vallecillo-Castillo, A200 557 547 (BIA Jan. 19, 2017)

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