**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

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**Name: A[redacted]-M[redacted], E[redacted] A[redacted]**

**A [redacted]-461**

**Date of this notice: 5/10/2018**

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.
Pauley, Roger
Snow, Thomas G

Userteam: Docket

File: [redacted] 461 – West Valley, UT Date: MAY 10 2018

In re: E[redacted] A[redacted] A[redacted]-M[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jared S. Lawrence, Esquire

ON BEHALF OF DHS: Jonathan Stowers
Assistant Chief Counsel

APPLICATION: Convention Against Torture

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated June 6, 2017, which denied his application for protection under the Convention Against Torture, 8 C.F.R. § 1208.16(c), but granted voluntary departure under section 240B of the Act, 8 U.S.C. § 1229c. The parties have provided arguments on appeal. The appeal will be sustained, and the record will be remanded.

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).

The record shows that during the merits hearing, the respondent testified about an article and other documents concerning his cousin, who was kidnapped and killed (Tr. at 30-31). When questioned about why the documents were not submitted into evidence, it was noted that they were included in the submission for bond proceedings (Tr. at 30, 33). The Immigration Judge declined the respondent's request to admit the bond submission into evidence, stating that the file is separate and apart from removal proceedings (Tr. at 34-35).[1] *See* 8 C.F.R. § 1003.19(d); *see also Matter of P-C-M-*, 20 I&N Dec. 432 (BIA 1991).

We disagree with the Immigration Judge's conclusion that he was foreclosed from substituting documents in the bond record to the record in the instant removal proceeding. Based on the testimony from the respondent, the evidence is relevant to both the bond and merits cases,[2] and it

[1] Because the Immigration Judge noted on the record that he had looked at the bond file during the merits hearing, it is clear that the bond file was available (Tr. at 38).

[2] Inasmuch as we do not have access to the evidence in question, we are unable to evaluate the Department of Homeland Security's (DHS's) contention on appeal that, even if the Immigration

would amount to form over substance effectively to lock away the bond file. We acknowledge that 8 C.F.R. § 1003.19(d) states that consideration by the Immigration Judge of an application regarding custody or bond shall be separate and apart from any removal proceeding. However, nothing in the regulation provides that evidence in the bond file cannot be retrieved and offered separately during the merits case if admissible in both settings.[3] Although the Immigration Judge cannot entertain the bond record, he can entertain identical evidence in both contexts. Therefore, we will sustain the appeal and remand for further proceedings. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and 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



Judge had considered the bond submission, it does not establish the respondent's eligibility for protection under the Convention Against Torture. DHS's Br. at 3.

[3] In so doing, the Immigration Judge should ensure that each file contains either the originals or the photocopies of the submission in question.