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

Slattery, Kevin Daniel
Kevin D. Slattery, P.A.
4860 West Gandy Blvd.
Tampa, FL 33611

DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324

Name: L[redacted]-L[redacted], Y[redacted]A[redacted] **A[redacted]-594**

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:
Holmes, David B.
O'Herron, Margaret M
Greer, Anne J.

Userteam: Docket

File: A[redacted]594 – Dallas, TX

Date: OCT 29 2015

In re: Y[redacted] A[redacted] L[redacted]-L[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kevin Daniel Slattery, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated June 26, 2015,[1] denying her motion to reopen. Considering the entirety of circumstances presented by this case, including the lack of affirmative opposition by the Department of Homeland Security (DHS), that the respondent is now represented by counsel,[2] and that the respondent is awaiting final adjudication of her application for derivative U nonimmigrant status, the proceedings will be reopened and administratively closed. *See Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).

If either party to this case objects to the continued administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Board of Immigration Appeals Clerk's Office, without fee, but with certification of service on the opposing party. The following order will be entered.

ORDER: The proceedings are reopened and administratively closed.

FOR THE BOARD

[1] The transmittal notice indicates the decision was mailed to the parties on July 7, 2015.

[2] Given that we are granting the respondent's motion to reopen and administratively close proceedings, we do not reach counsel's appellate contention that the Immigration Judge erred in permitting the respondent's mother to enter pleadings on the respondent's behalf (Resp't Br. at 4-7).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

Kevin D. Slattery, P.A.
Slattery, Kevin Daniel
4860 West Gandy Blvd.
Tampa, FL 33611

IN THE MATTER OF [redacted] FILE A [redacted]-594 DATE: Jul 7, 2015
I[redacted]-L[redacted], Y[redacted] A[redacted]

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 20530

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

OTHER: _____

COURT CLERK
IMMIGRATION COURT FF

CC: WARBURTON, MELISSA
125 E. HWY 114, STE 500
IRVING, TX, 75062

COPY

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DALLAS, TEXAS

In Re: Y[redacted] A[redacted] L[redacted] L[redacted] Case No. [redacted]594

ORDER

This matter is before the Court pursuant to the Respondent's June 18, 2015, Motion to Reopen. The Respondent also concurrently filed a Motion to Change Venue. For the reasons set forth below, the motions will be DENIED.

The Respondent is a 14 year old female, native and citizen of Honduras. Exhibit 1. She arrived in the United States at or near Hidalgo, Texas on or about June 26, 2014. *Id.* The Respondent was not then admitted or paroled after inspection by an immigration officer. *Id.*

The Respondent appeared with her mother before the Dallas Immigration Court on February 11, 2015. The Court granted her a continuance in order to seek legal representation. The Court stressed the importance of seeking counsel immediately. The Respondent and her mother were also advised that at the next hearing the Court could proceed with her case irrespective of whether she had an attorney to represent her.

The Respondent appeared without an attorney on April 1, 2015. Her mother was also present. Pursuant to the Court's advisals at the prior hearing, the Court proceeded with the Respondent's case, allowing her mother to represent her as contemplated by the Immigration Court Practice Manual ("ICPM"). *See* ICPM, Chap. 2.8 ("If a party is a child, then a parent or legal guardian may represent the child before the Immigration Court, provided that parent or legal guardian clearly informs the Immigration Court of their relationship."). Based on the admissions of the Respondent's mother, the Court found removability established by clear and convincing evidence. The Court questioned the Respondent's mother about the Respondent's eligibility for relief. Based on the Respondent's mother's answers, the Court determined that the Respondent was only eligible for pre-conclusion voluntary departure. The Court granted the Respondent such relief and ordered her to depart the United States on or before July 30, 2015.

On June 18, 2015 the Respondent, through counsel, filed a Motion to Reopen with the Immigration Court requesting reopening to permit her to pursue derivative U-visa status with USCIS. *See* Motion to Reopen, pg. 1. A motion to reopen shall state the new facts that will be proven at a hearing if the motion is granted and shall be supported by affidavits and other evidentiary material. 8 C.F.R. § 1003.23(b)(3). A motion to reopen will not be granted unless the Immigration Judge is satisfied that the evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing. *Id.*

The evidence of record makes clear that the Respondent's stepmother, the person through whom the Respondent wishes to claim derivative U-visa status, had a pending U-visa application

at the time of the Respondent's hearing. *See* Motion to Reopen, Tab F, G. As her stepdaughter, the Respondent was eligible for derivative U-visa status at that time. *See* 8 C.F.R. § 214.14(a)(10); *see also* INA 101(b)(1)(B) (defining a "child" to also include some stepchildren); Motion to Reopen, Tabs C, D. If she wished to seek administrative closure or a continuance to await the adjudication of her stepmother's petition, she could have requested such relief at the hearing. She did not do so. Though the record reflects that the Respondent did not file her request for derivative U-visa status with USCIS until after her hearing, it appears that she was eligible to do so at the time of hearing. *See* Motion to Reopen, Tab G. Thus, the relief she now seeks was available and could have been discovered or presented at the former hearing.

The present case is distinguishable from the unpublished Board decisions proffered by the Respondent. *See* Motion to Reopen, Tabs N, Q-S. In those cases, the respondents requested continuances to await the adjudication of their U-visa petitions, which were denied by the Immigration Judges. The Board remanded the cases pursuant to *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012). In another case, the respondent submitted his U-visa application at his hearing. *See* Motion to Reopen, Tab O. In all of these cases, the respondents had requested relief in court on the basis of their pending U-visa petition. The Respondent made no such request at the time of the hearing.

The Court also acknowledges the Board's decision in *Matter of Yewondwosen*, 21 I&N Dec. 1025 (BIA 1997). However, in that case the Government affirmatively joined in the respondent's motion. In the instant case, the Respondent has simply made representations that the Government does not oppose the motion. *See* Motion to Reopen, pg. 11. The Court notes that the Government has not signed the motion or submitted a response to the Respondent's motion affirming this assertion. Therefore, the Court does not find *Matter of Yewondwosen* dispositive.

The Respondent also argues that her mother's representations, which were used by this Court to determine removability and relief, should not have been given conclusive weight because her mother did not meet the regulatory requirements of a "reputable individual" as defined by the regulations. *See* 8 C.F.R. § 1292.1(a)(3). The Respondent argues that because her mother did not file an entry of appearance, a written declaration that she is not receiving remuneration, and the Court did not question her to determine her "good moral character" she was not entitled to represent the Respondent. *See* 8 C.F.R. §§ 1003.17(a), 1292.1(a)(3). The Court is unpersuaded by this argument.

The Court provided the Respondent an opportunity to obtain an attorney and emphasized the importance of doing so. The Court also advised the Respondent and her mother that with or without an attorney, the Respondent's case may proceed at the next hearing. As the Respondent appeared at the next hearing without an attorney, she effectively chose to proceed *pro se*. However, because the Respondent was a minor at the time of her hearing, the Court was unable to take pleadings from her personally. *See* 8 C.F.R. § 1240.10(c) (noting legal incompetence of minors). Pursuant to the regulations, the Court took pleadings from the Respondent's mother. *See id.* The ICPM requires that a family member demonstrate that he or she is a "reputable individual" within the scope of 8 C.F.R. § 1292.1(a)(3) *only* if the alien is an adult. *See* ICPM, Chap. 2.8. "If a party is a *child*, then a parent or legal guardian may represent the child in Immigration Court, provided the parent or legal guardian clearly informs the Immigration Court of their relationship." *Id.* (emphasis added). By distinguishing between children and adult

respondents, the ICPM precludes the parents of a minor child from the requirements of 8 C.F.R. § 1292.1(a)(3). The Court asked the Respondent's mother about her relationship to the Respondent and determined that she was her parent. As such, the Court properly permitted her to represent the Respondent.

The Court also sees no evidence in the record warranting *sua sponte* reopening of this case. *See Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999) (describing *sua sponte* reopening as an "extraordinary remedy reserved for truly exceptional situations"); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997); *Matter of Beckford*, 22 I&N Dec. 1216, 1218 (BIA 2000) (noting that is it the respondent's burden to demonstrate that an "exceptional situation" exists meriting *sua sponte* reopening). The Court notes that the Respondent may seek a stay of the order of removal to await the adjudication of her U-visa petition. *See* 8 C.F.R. § 214.14(f)(2)(i). Moreover, if the Respondent is granted derivative U-visa status she may submit a joint motion to reopen and terminate proceedings. *See* 8 C.F.R. § 214.14(f)(6).

While the Court appreciates the Respondent's thorough and polished brief, the Court finds no legal basis for her claims to reopen the proceedings. Accordingly, the Respondent's Motion to Reopen will be denied. As the Court has declined to reopen the Respondent's case, her Motion to Change Venue is moot and will also be denied.

If an alien files a motion to reopen during the period allowed for voluntary departure, the grant of voluntary departure terminates automatically, and the alternate order of removal takes effect immediately. 8 C.F.R. § 1240.26(b)(1)(iii). The Respondent was granted pre-conclusion voluntary departure and ordered to depart on or before July 30, 2015. *See* Motion to Reopen, Tab B. The present motion was filed on June 18, 2015, prior to the expiration of the period of voluntary departure. Therefore, the grant of voluntary departure has terminated automatically and the alternate order of removal will take effect immediately. 8 C.F.R. § 1240.26(b)(1)(iii). Moreover, the penalties for failing to depart voluntarily under Section 240B(d) of the Act shall not apply.[1] *Id.*

On this 26 day of June 2015.

Michael P. Baird
United States Immigration Judge

Copy to:
Chief Counsel, DHS/ICE

COPY

[1] Section 240B(d) of the Act provides that an alien who fails to depart voluntarily within the time period specified by the Court shall be subject to a monetary penalty between $1,000 and $5,00, and shall be ineligible for a period of ten years to receive any further relief under various sections of the Act.