



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MORALES-ORTIZ, ELIAS

A 201-987-822

Date of this notice: 9/1/2020

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:
Donovan, Teresa L.
Wilson, Earle B.
Greer, Anne J.

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A201-987-822 – Pompano Beach, FL

Date:

SEP - 1 2020

In re: Elias MORALES-ORTIZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David H. Stoller, Esquire

ON BEHALF OF DHS: Enrique J. San Miguel-Ruiz
Assistant Chief Counsel

APPLICATION: Continuance

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's November 5, 2019, decision, deeming his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), abandoned and ordering him removed to Mexico. On December 2, 2019, the respondent filed a motion to reopen with the Immigration Judge. In a December 10, 2019, order the Immigration Judge, noting that a Notice of Appeal of his November 5, 2019, decision was filed with the Board, forwarded the motion to reopen with the record of proceedings, to the Board. We will treat the motion as a motion to remand. *See* 8 C.F.R. § 1003.2(c)(4). The Department of Homeland Security opposes the appeal. The appeal will be sustained and the record will be remanded for further proceedings.

We review the Immigration Judge's findings of fact for clear error, but we review questions of law, discretion and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i); *see also Zhu v. U.S. Att'y Gen.*, 703 F.3d 1303, 1314 (11th Cir. 2013).

The respondent has been in removal proceedings since October 1, 2019 (Exh. 1). At his first appearance before the Immigration Judge on October 17, 2019, the Immigration Judge emphasized that all applications must be submitted by the next hearing on November 7, 2019, or be deemed abandoned (Tr. at 7). At the next hearing on November 5, 2019,¹ the respondent appeared in court with nothing to submit. His attorney requested another continuance and informed the court that he was responsible for the application not being completed and timely filed with the court (Tr. at 11-12). The Immigration Judge denied the respondent's request for a continuance, found that the respondent had abandoned all applications for relief, and ordered the respondent removed to Mexico (IJ at 3; Tr. at 13-17).

The respondent on appeal argues that the Immigration Judge erred in denying his request for a continuance in order to file an application for cancellation of removal under section 240A(b) of the Act. With his motion, the respondent has submitted a declaration from the attorney at his

¹ The court granted the respondent's motion to reset the hearing date to November 5, 2019, based on a conflict in the schedule of respondent's counsel on November 7, 2019 (IJ at 2-3).

representative's law firm that admits that she was responsible for missing the filing deadline for the application for relief, a Form EOIR-42B, and evidence related to the respondent's eligibility for cancellation of removal.

The Board has held that applications for benefits under the Act are properly denied as abandoned when the alien fails to file them in a timely manner after having been provided a fair opportunity to do so. On de novo review pursuant to 8 C.F.R. § 1003.1(d)(3)(ii), we disagree with the Immigration Judge's decision denying the respondent's request to continue to allow him to submit an application for relief. The hearing transcript reveals that the November 5, 2019, request for a continuance was the first made by the respondent, made only 19 days after his first court appearance on October 17, 2019. At the October 17, 2019, hearing the respondent identified the type of relief he would be seeking (Tr. at 4). Furthermore, respondent's counsel has accepted full responsibility for missing the filing deadline. Under the circumstances presented here, we conclude that the respondent was not given sufficient time to comply with the requirement to submit any applications for relief, and has demonstrated good cause for a continuance. *See Matter of L-A-B-R-*, 27 I&N Dec. 405, 407 (A.G. 2018); 8 C.F.R. § 1003.29.

With his motion the respondent has submitted a Form 42B and prima facie evidence of his eligibility for cancellation of removal. Accordingly, we will remand to the Immigration Judge to allow the respondent to apply for cancellation of removal and any other forms of relief for which he may be eligible.

ORDER: The appeal is sustained and the record is remanded for further proceedings consistent with this decision.



FOR THE BOARD