U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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525 West Van Buren Street
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Name: A[redacted]-C[redacted], J[redacted] ... **A[redacted]-709**

Date of this notice: 2/14/2020

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:
Hunsucker, Keith
Liebowitz, Ellen C
Mullane, Hugh G.

Userteam: Docket

File: A[redacted]-709 – Chicago, IL

Date: FEB 14 2020

In re: J[redacted] L[redacted] A[redacted]-C[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William A. Quiceno, Esquire

ON BEHALF OF DHS: Alexandra Kostich
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's decision dated May 21, 2018, which denied his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security ("DHS") has opposed the appeal. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, 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 respondent first argues on appeal that the Immigration Judge failed to resolve the issue of removability as charged on the Notice to Appear ("NTA") (Respondent's Br. at 3-5). The NTA shows that the respondent was charged with inadmissibility under section 212(a)(6)(A)(i) of the Act, as an alien present in the United States without being admitted or paroled (Exh. 1). The transcript indicates that the respondent, through counsel, denied removability as charged on the NTA (Tr. at 4-5). The Immigration Judge then scheduled the next individual hearing "both to resolve respondent's removability and then to proceed with a cancellation application" (Tr. at 5). At the May 17, 2018, individual hearing, there was a brief discussion regarding the respondent's claim that he last arrived in the United States with a visa, but the issue of the respondent's removability under section 212(a)(6)(A)(i) of the Act was not resolved (Tr. at 19).

In her May 21, 2018, decision, the Immigration Judge acknowledged the respondent's claim that he last entered the United States with a visa, but sustained the respondent's removability based on the respondent's purported concession (IJ at 2). In the cover page and in a footnote in her decision, the Immigration Judge indicated that the original charge of removability under section 212(a)(6)(A)(i) of the Act was "stricken" and "amended" to reflect a new charge of removability under section 237(a)(1)(C)(i) of the Act, as an alien who failed to maintain status following admission (IJ at 1, and fn. 1). The record before us, however, does not contain a Form I-261 ("Additional Charges of Inadmissibility/Deportability") reflecting an amended charge filed by the DHS. *See Matter of Ordaz-Gonzalez*, 26 I&N Dec. 637, 640 (BIA 2015) (noting that "[i]f the

DHS wishes to amend the notice to appear, it may do so through the service of a Form I-261"). The record is, likewise, unclear as to whether the respondent was apprised of the amended charge and provided an opportunity to respond to the additional or amended factual allegations and charges, as required by the regulations. *See* 8 C.F.R. § 1240.10(e).

In view of the foregoing, we find it necessary to remand this case to the Immigration Court for clarification of the record on the issue of the respondent's removability. The following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

FOR THE BOARD