U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: L[redacted], B[redacted]

A [redacted]-153

Date of this notice: 7/25/2019

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:
Creppy, Michael J.
Malphrus, Garry D.
Baird, Michael P.

Userteam: Docket

File: A[redacted]-153 – San Diego, CA

Date: JUL 25 2019

In re: B[redacted] L[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ann M. Walsh, Esquire

ON BEHALF OF DHS: Lauren Ommanney
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of the Democratic Republic of Congo, has appealed from the decision of the Immigration Judge dated April 9, 2018, denying her motion to reopen. The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be sustained, the motion will be granted, the Immigration Judge's decisions will be vacated, and the record will be remanded to the Immigration Court.

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).

On January 26, 2018, the Immigration Judge ordered the respondent removed from the United States to the Democratic Republic of Congo. The respondent timely filed a motion to reconsider. In a decision dated March 13, 2018, the Immigration Judge denied the respondent's motion. On March 28, 2018, the respondent timely filed a motion to reopen. The respondent submitted an affidavit explaining her belief that she must agree to a removal order in order to be reunited with her daughter, and her statement that she now has a fear of returning to her native country. The Immigration Judge denied the motion because she determined the respondent had not submitted evidence that was material and previously unavailable. 8 C.F.R. § 1003.23(b)(3).

Immigration Judges and the Board possess discretion to reopen or reconsider cases sua sponte. 8 C.F.R. §§ 1003.2(a), 1003.23(b)(1); *see Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). Here, we find that when the totality of the circumstances are considered, including the Immigration Judge's instruction to the respondent to write to her if the respondent decides she is afraid to return to her country, an exceptional circumstance has been demonstrated which warrants reopening. Accordingly, we will sustain the appeal, vacate the Immigration Judge's previous decisions, grant the respondent's motion to reopen sua sponte, and remand the record to the Immigration Judge for consideration of the respondent's applications for asylum, withholding of removal, and protection under the Convention Against Torture. In any asylum proceedings on remand, it is proper to consider the respondent's inconsistent

statements as to whether she had a fear of returning to her home country. We express no view on the ultimate resolution of the case.

ORDER: The respondent's appeal is sustained, and the Immigration Judge's decisions of January 26, 2018, March 13, 2018, and April 9, 2018, are vacated.

FURTHER ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.

FOR THE BOARD

Temporary Board Member Michael P. Baird respectfully dissents without opinion.