



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*

**Maldonado, Javier
Law Office of Javier N. Maldonado
8918 Tesoro Dr.
Ste. 575
San Antonio, TX 78217**

**DHS/ICE Office of Chief Counsel - SNA
1015 Jackson-Keller Rd, Suite 100
San Antonio, TX 78213**

Name: BEGUM, AMENA

A 077-664-364

Date of this notice: 4/9/2019

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:
Wendtland, Linda S.

Userteam: Docket

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Falls Church, Virginia 22041

File: A077-664-364 – San Antonio, TX

Date:

APR - 9 2019

In re: Amena BEGUM

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Javier Nyrup Maldonado, Esquire

ON BEHALF OF DHS: Lacy L. McAndrew
Assistant Chief Counsel

APPLICATION: Termination

This case was last before us on September 20, 2016, when we remanded the record to the Immigration Judge for further proceedings regarding the respondent's removability pursuant to section 237(a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(A). Upon remand, in a written decision issued on October 30, 2017, the Immigration Judge terminated the removal proceedings. The Department of Homeland Security ("DHS") has filed an untimely appeal of that decision and has filed a motion to accept the late-filed notice of appeal. The respondent has filed a brief in response to the DHS's appeal and has argued that the Board lacks jurisdiction over the untimely appeal. We will deny the DHS's motion and deem its appeal as untimely.

The DHS had until November 30, 2017, to file a notice of appeal ("NOA") of the Immigration Judge's October 30, 2017, decision, given that the decision was not mailed until October 31, 2017. The DHS's motion to accept the late-filed appeal states that the NOA filing was deposited with United Parcel Service ("UPS") on November 28, 2017, to be sent to the Board by "2nd Day Air." The UPS tracking detail attached to the DHS's motion indicates that a transportation issue delayed the delivery of the NOA to the Board until December 1, 2017. The DHS argues that the Board should accept and consider the untimely appeal because the appeal was only 1 day late and that UPS, which is an overnight delivery courier recommended in the Board's practice manual, caused the delay. The respondent argues that the Board lacks jurisdiction over the appeal because the 30-day filing deadline is strict, and the Board does not have authority to extend the deadline. In addition, the respondent argues that the UPS delivery delay should have been anticipated by the DHS and is not a rare or exceptional circumstance that would warrant acceptance of the appeal on certification. The respondent further argues that the facts in this case are indistinguishable from *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006), *aff'd sub nom. Liadov v. Mukasey*, 518 F.3d 1003 (8th Cir. 2008).

As the DHS concedes, its appeal is untimely, and neither the statute nor the regulations grant us the authority to extend the time for filing the appeal. *Matter of Liadov*, 23 I&N Dec. at 993. The Board's Practice Manual indicates a possibility of excusing untimely filings in the case of rare circumstances. *The Board of Immigration Appeals Practice Manual*, § 3.1(b)(iv) (Postal or

delivery delays do not affect existing deadlines, nor does the Board excuse untimeliness due to such delays, except in rare circumstances). However, we conclude that this case is very similar to *Matter of Liadov*, and the DHS has not shown that the UPS's delay in delivering its appeal constitutes a rare circumstance warranting considering the appeal on certification. As our practice manual states, postal or delivery delays do not affect existing deadlines, and parties should anticipate all Post Office or courier delays. *Practice Manual*, § 3.1(b)(iv). The use of an overnight delivery service such as UPS does not excuse the filing deadline, and delivery past the "guaranteed" date is not a "rare" circumstance. *Matter of Liadov*, 23 I&N Dec. at 993.

The Immigration Judge's decision is therefore now final, and the record will be returned to the Immigration Court without further action. See 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

In light of the foregoing, the following orders will be entered.

ORDER: The DHS's motion to accept the late-filed notice of appeal is denied.

FURTHER ORDER: The record is returned to the Immigration Court without further action.

Linda J. Wenttland
FOR THE BOARD