



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: O [REDACTED]-M [REDACTED], O [REDACTED] G [REDACTED]... A [REDACTED]-082

Date of this notice: 6/7/2019

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:
Cole, Patricia A.

User team: Docket

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ng

Falls Church, Virginia 22041

File: A-082 – Los Angeles, CA

Date:

JUN - 7 2019

In re: O-G-O-M-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Geraldine E. Escalante, Esquire

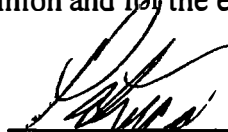
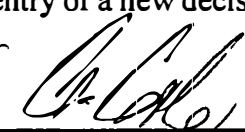
APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Guatemala, timely appeals an Immigration Judge's January 9, 2018, decision. The Immigration Judge found the respondent removable as charged, denied his applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3) (2012), respectively, and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2) (2018), and ordered the respondent removed. On appeal, the respondent contests the denial of all three forms of relief and protection. He also seeks remand for the Immigration Judge to conduct a competency hearing. The record will be remanded to the Immigration Judge for further adjudication and the entry of a new decision.

During proceedings below, counsel for both the respondent and the Department of Homeland Security ("DHS") repeatedly stated that they wished to raise the issue of the respondent's mental competency and the potential need for a hearing pursuant to *Matter of M-A-M-*, 25 I&N Dec. 474, 481 (BIA 2011) (observing that requesting a mental competency evaluation is a "measure available to Immigration Judges" to assess competency (BIA 2011) (Tr. at 35, 87, 93, 96, 97). While the parties all recognized that the only medical evidence relating to the respondent's mental health issues was contained in the record of bond proceedings, which are separate and apart from removal proceedings, both the respondent's counsel and counsel for the DHS brought up the existence of these records, which the parties and the Immigration Judge reviewed in court without entering them into the record, and which the parties all agreed showed a diagnosis of major depressive disorder with psychotic features (Tr. at 19-23, 84-90). Counsel for the respondent indicated that she had met with the respondent the evening prior to the hearing and his condition appeared to her to have worsened, stating that she had found the respondent to be "spaced out," that he had difficulty understanding things and expressing himself, that he sometimes answered "yes" to questions when he clearly meant "no," that he had been placed in isolation during detention for major depression, anxiety, and psychotic features, and that he had been taking unspecified medications for these disorders (Tr. at 19, 90-91). When the Immigration Judge observed that the respondent's inability to fully express himself could simply be due to nerves, the respondent's counsel replied that while many clients exhibit nervousness, "this guy, this is different" (Tr. at 37).

We appreciate that the Immigration Judge spent significant time attempting to determine whether there were any actual indicia of incompetency present, and found none (Tr. at 52).¹ Nevertheless, given the totality of the circumstances present in this matter, we determine that a formal evaluation of the respondent's competency, and the necessity of safeguards, is required. On remand, the Immigration Judge should consider whether the respondent was competent to participate in the hearing under the framework set out in *Matter of M-A-M-*, 25 I&N Dec. 474, 479 (BIA 2011), as well as take any other appropriate action. Accordingly, the following order will be entered.

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

FOR THE BOARD

¹ The Immigration Judge did not make a formal finding as to competency at the hearing, and did not address the issue in his decision.