



**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

**OBANDO-SEGURA, JOSE ANDRES  
A205-118-486  
DHS-WCDC  
P.O. BOX 189  
SNOW HILL, MD 21863**

**DHS/ICE Office of Chief Counsel - BAL  
31 Hopkins Plaza, Room 1600  
Baltimore, MD 21201**

**Name: OBANDO-SEGURA, JOSE ANDR... A 205-118-486**

**Date of this notice: 10/6/2017**

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Kelly, Edward F.

Userteam: Docket

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[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

Falls Church, Virginia 22041

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File: A205 118 486 – Baltimore, MD

Date: **OCT - 6 2017**

In re: Jose Andres OBANDO-SEGURA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Daniel B. Gilbert  
Assistant Chief Counsel

APPLICATION: Continuance; administrative closure; termination; voluntary departure

The respondent, a native and citizen of Colombia, appeals the decision of the Immigration Judge, dated May 17, 2017, ordering his removal from the United States. The Department of Homeland Security (“DHS”) is opposed to the respondent’s appeal. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that the record should be remanded to allow him to pursue a U-visa, and that the DHS did not prove his removability by clear and convincing evidence.

As an initial matter, the respondent, at his removal hearing on October 11, 2012, admitted that he was an alien who was admitted to the United States as a visitor with authorization to remain until February 2002. This admission was sufficient to sustain the charge of removability under section 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B) (IJ at 1; Exh. 1). 8 C.F.R. § 1240.10(c); *Matter of Teberen*, 15 I&N Dec. 689 (BIA 1976) (holding that, to establish an alien’s deportability as an overstay, the Service need only show that the alien was admitted as a nonimmigrant for a temporary period; that the period has elapsed; and that the alien has not departed). However, with respect to the charge of removability under section 237(a)(2)(B)(i) of the Act, we previously observed, in our decision dated February 10, 2015, that the record lacked the pertinent conviction records which were admitted to the record. As such, if upon remand, the DHS wishes to pursue the second charge of removability, it should be permitted to present evidence to substantiate the claimed conviction. Likewise, as we stated in our prior decision, the DHS should have the opportunity to amend the Notice to Appear as appropriate.

Turning to the respondent’s claims to nonimmigrant status under section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), he has presented evidence on appeal that United States Citizenship and Immigration Services has recently received his Petition for U Nonimmigrant Status. Considering this new evidence, we conclude that remanded proceedings are warranted in order for the respondent to renew his request for a continuance or, alternatively, request that these

proceedings be administratively closed pending the adjudication of his U visa claims. *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).

Finally, upon remand, the Immigration Judge should further address the respondent's alternative request for voluntary departure. With respect to the issue of establishing the requisite 5 years of good moral character needed to be granted voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b), while the respondent has apparently been imprisoned for approximately 3 years during the course of his 16-year presence in the United States, it is unclear whether, during the past 5 years, he has actually been imprisoned for 180 days or more. Section 101(f)(7) of the Act. Moreover, the respondent should also be permitted to request voluntary departure under section 240B(a) of the Act, as he argues on appeal. However, if he wishes to request pre-conclusion voluntary departure, he should be prepared to waive appeal of all issues. 8 C.F.R. § 1240.26(b)(1)(i)(D).

At the present time, we express no opinion regarding the ultimate outcome of this case. However, as remanded removal proceedings are appropriate for the Immigration Judge to further address the issues, the following order is entered.

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

IMMIGRATION COURT  
31 HOPKINS PLAZA, ROOM 440  
BALTIMORE, MD 21201

In the Matter of

Case No.: A205-118-486

OBANDO-SEGURA, JOSE ANDRES  
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 05/17/2017.  
This memorandum is solely for the convenience of the parties. If the  
proceedings should be appealed or reopened, the oral decision will become  
the official opinion in the case.

☒ The respondent was ordered removed from the United States to Colombia  
~~or in the alternative to~~

☐ Respondent's application for voluntary departure was denied and  
respondent was ordered removed to or in the  
alternative to .

☐ Respondent's application for voluntary departure was granted until  
upon posting a bond in the amount of \$ \_\_\_\_\_  
with an alternate order of removal to .

Respondent's application for:

☐ Asylum was ( ) granted ( ) denied ( ) withdrawn.

☐ Withholding of removal was ( ) granted ( ) denied ( ) withdrawn.

☐ A Waiver under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn.

☐ Cancellation of removal under section 240A(a) was ( ) granted ( ) denied  
( ) withdrawn.

Respondent's application for:

☐ Cancellation under section 240A(b)(1) was ( ) granted ( ) denied  
( ) withdrawn. If granted, it is ordered that the respondent be issued  
all appropriate documents necessary to give effect to this order.

☐ Cancellation under section 240A(b)(2) was ( ) granted ( ) denied  
( ) withdrawn. If granted it is ordered that the respondent be issued  
all appropriated documents necessary to give effect to this order.

☐ Adjustment of Status under Section \_\_\_\_\_ was ( ) granted ( ) denied  
( ) withdrawn. If granted it is ordered that the respondent be issued  
all appropriated documents necessary to give effect to this order.

☐ Respondent's application of ( ) withholding of removal ( ) deferral of  
removal under Article III of the Convention Against Torture was  
( ) granted ( ) denied ( ) withdrawn.

☐ Respondent's status was rescinded under section 246.

☐ Respondent is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_.

☐ As a condition of admission, respondent is to post a \$ \_\_\_\_\_ bond.


☐ Respondent knowingly filed a frivolous asylum application after proper  
notice.

☐ Respondent was advised of the limitation on discretionary relief for  
failure to appear as ordered in the Immigration Judge's oral decision.

☐ Proceedings were terminated.

☐ Other:

Date: May 17, 2017

  
ELIZABETH A. KESSLER  
Immigration Judge

Appeal: Waived/Reserved

Appeal Due By: 6.16.2017

Alien Number: 205-118-486

Name: OBANDO-SEGURA, JOSE ANDRES

LIMITATIONS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

- ( ) 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appear for this hearing other than because of exceptional circumstances beyond your control\*\* will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the date of entry of the final order of removal.
- ( ) 2. You have been scheduled for an asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other than because of exceptional circumstances beyond your control\*\* will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years from the date of your scheduled hearing.
- ( ) 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date other than because of exceptional circumstances beyond your control\*\* will result in your being ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the date of the scheduled departure or the date of unlawful reentry, respectively. Your voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than \$1000 and not more than \$5000.
- (✓) 4. An order of removal has been entered against you. If you fail to appear pursuant to a final order of removal at the time and place ordered by the DHS, other than because of exceptional circumstances beyond your control\*\* you will not be eligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for ten (10) years after the date you are scheduled to appear.

\*\*the term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGIBLE ARE:

- 1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
- 2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
- 3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge.

Date: May 17, 2017

Immigration Judge: \_\_\_\_\_ or Court Clerk: HTD

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN's ATT/REP [ ] DHS

DATE: 5/17/17 BY: COURT STAFF

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BALTIMORE, MARYLAND

File: A205-118-486

May 17, 2017

In the Matter of

JOSE ANDRES OBANDO-SEGURA

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: Ian Taronji

ON BEHALF OF DHS: Daniel Gilbert

ORAL DECISION OF THE IMMIGRATION JUDGE

The court does find that removability was established by clear and convincing evidence. At an earlier stage of the proceedings, both of the charges were sustained, and the respondent had admitted all of the allegations in the Notice to Appear. The respondent was seeking only a request for a continuance to have a U visa adjudicated, and he also did want to request posthearing voluntary departure in the alternative. The court is denying the request for a continuance for the U visa to be adjudicated. The U visa has not been filed yet, but apparently it would be filed this week. Nonetheless, the court is not willing to grant a continuance for this collateral

matter. It is the court's understanding that that must be pursued through DHS, but also that it can be pursued while the respondent files any appeals of a removal order or a grant of posthearing voluntary departure.

The respondent did request posthearing voluntary departure; however, the respondent does not qualify. He does not meet the good moral character requirement specifically given the time he has spent incarcerated as a result of a conviction. And he said that he had spent roughly three years under those circumstances. Accordingly, any request for posthearing voluntary departure must be denied for failure to meet the legal requirements, and the court hereby orders the respondent removed from the United States to Colombia as there are no requests for relief remaining before the court at this time.

**Please see the next page for electronic**

**signature**

ELIZABETH A. KESSLER  
Immigration Judge

//s//

Immigration Judge ELIZABETH A. KESSLER

kessler on July 12, 2017 at 11:13 AM GMT

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)



**CERTIFICATE PAGE**

I hereby certify that the attached proceeding before JUDGE ELIZABETH A.  
KESSLER, in the matter of:

JOSE ANDRES OBANDO-SEGURA

A205-118-486

BALTIMORE, MARYLAND

was held as herein appears, and that this is the original transcript thereof for the file of  
the Executive Office for Immigration Review.



\_\_\_\_\_  
PATTI PETERSEN (Transcriber)

NATIONAL CAPITOL CONTRACTING

July 11, 2017

\_\_\_\_\_  
(Completion Date)