



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: J [REDACTED], D [REDACTED]

A [REDACTED]-003

Date of this notice: 7/15/2020

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:
Pepper, S. Kathleen

SchwarzA
User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-003 – San Diego, CA

Date:

JUL 15 2020

In re: D [REDACTED] J [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Isabel E. Duarte, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture; remand

The respondent, a native and citizen of Haiti, appeals from the Immigration Judge's decision dated July 16, 2018, which denied his application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture, 8 C.F.R. § 1208.16(c). The respondent has filed a brief on appeal, which included a motion to remand the record to the Immigration Judge. The Department of Homeland Security (DHS) has not filed a brief on appeal or responded to the motion. The record will be remanded.

The respondent asks that we remand that record to the Immigration Judge to await the adjudication of a pending Form I-130, Petition for Alien Relative, filed on his behalf by his United States citizen spouse and a pending Form I-485, Application to Register Permanent Residence or Adjust Status, both of which were filed with the United States Citizenship and Immigration Services (USCIS) on May 9, 2019. Respondent's Br. at 7-9. The respondent, who was paroled into the United States and charged as an arriving alien, acknowledges that the USCIS has exclusive jurisdiction over his visa petition and relief application but asserts that the USCIS will not approve his relief application in the exercise of discretion if he has been issued a removal order.¹ Respondent's Br. at 7, Tab A at 54, Tab C.

The Board has the authority to exercise its discretion to reopen and remand these proceedings in order to give the USCIS time to adjudicate the pending visa petition and adjustment application. *Singh v. Holder*, 771 F.3d 647, 651-53 (9th Cir. 2014); *Kalilu v. Mukasey*, 548 F.3d 1215, 1218 (9th Cir. 2008). *See Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992) (the requirements for a motion to remand are essentially the same as the requirements for a motion to reopen). In determining whether such action is warranted, we will consider the likelihood the respondent will receive the relief sought and its impact on the outcome of proceedings, the respondent's diligence in pursuing that relief, concerns regarding administrative efficiency, and the DHS's response. *See Matter of L-N-Y-*, 27 I&N Dec. 755 (BIA 2020).

¹ Because he appealed from the Immigration Judge's decision, the respondent is not under a final order of removal.

The respondent's submission includes: a marriage certificate for the marriage that occurred on December 3, 2018; a birth certificate for his United States citizen spouse; evidence of the bona fides of the marriage, including a birth certificate for their United States citizen child; a bona fide marriage exemption request; and a copy of the Form I-130 and the Form I-485 with filing receipts. Respondent's Br., Tabs A and B. *See generally Matter of Velarde*, 23 I&N Dec. 253, 265-57 (BIA 2002). *See also* 8 C.F.R. §§ 204.2(a)(1)(iii)(A), 245.1(c)(8)(iii)(F). Thus, the visa petition appears to be prima facie approvable, and a visa would be immediately available upon the approval of the visa petition. There are no apparent bars to adjustment of status. In addition, the respondent appears to have acted diligently in the preparation and filing of the visa petition and adjustment application since he married a United States citizen. Finally, the DHS has not identified any concerns about administrative efficiencies or otherwise expressed any opposition to the requested remand.

Under these circumstances, the Board will exercise its discretion to remand the record to the Immigration Judge pending the USCIS's adjudication of the pending Form I-130 and Form I-485. *See Matter of Castro-Tum*, 27 I&N Dec. 271, 287 (BIA 2018) (providing that an Immigration Judge may grant "a reasonable adjournment" (quoting 8 C.F.R. § 1240.6)). Accordingly, the following order will be entered.

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

JRP/mm

FOR THE BOARD