U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: H[redacted]-M[redacted], J[redacted] C[redacted]... **A[redacted]-388**

Date of this notice: 2/20/2020

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:
Greer, Anne J.
Wendtland, Linda S.
Donovan, Teresa L.

Userteam: Docket

File: A[redacted]-388 – Orlando, FL

Date: FEB 20 2020

In re: J[redacted] C[redacted] H[redacted]-M[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Vivian L. Canals, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's June 24, 2019, decision denying his motion to reopen. The appeal will be sustained and 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 judgement, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was ordered removed in absentia on July 16, 2008 (IJ at 1). On April 12, 2019, he filed a motion to reopen and rescind his in absentia removal order (IJ at 1). The Department of Homeland Security ("DHS") filed an opposition to the motion, and the Immigration Judge denied the motion on May 15, 2019 (IJ at 1).

On May 28, 2019, the respondent filed a second motion to reopen. This motion was based on a claim of changed country conditions and the respondent sought to apply for asylum and related relief. The DHS again opposed the motion (IJ at 1). On June 24, 2019, the Immigration Judge denied the respondent's second motion to reopen and this appeal followed (IJ at 1-2).

We will remand the record for further consideration of the respondent's motion to reopen. The Immigration Judge denied the respondent's motion for two reasons. First, the Immigration Judge concluded that the motion was number-barred under 8 C.F.R. § 1003.23(b)(1) because it was the respondent's second motion to reopen (IJ at 1). Second, the Immigration Judge concluded that the motion "simply repeat[ed] the same arguments from his prior motion to reopen" (IJ at 2). In what may have been a typographical error, the Immigration Judge also incorrectly described the respondent's second motion as a motion to reconsider (IJ at 2).

Ordinarily, a party may only file one motion to reopen proceedings and that motion must be filed within 90 days after entry of the final administrative order of removal. *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.23(b)(1). But the time and numerical limitations on motions to reopen do not apply if the basis of the motion is to apply for asylum and related relief and is based on changed country conditions arising in the country of nationality, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. *See* section

240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.23(b)(4)(i); *see also Matter of J-G-*, 26 I&N Dec. 161, 163 (BIA 2013) (holding that the numerical limitations on filing a motion to reopen in 8 C.F.R. § 1003.23(b)(1) are not applicable to an alien seeking reopening to apply for asylum and withholding of removal based on changed country conditions). We therefore conclude that the Immigration Judge improperly determined that the respondent's motion to reopen was numerically barred.

We also disagree with the Immigration Judge that the second motion repeats the arguments of the first motion. Although some of the arguments are the similiar, such as the respondent's request for sua sponte reopening, the second motion argues changed country conditions in Honduras for the first time. The Immigration Judge did not address this issue. We will therefore remand the record for the Immigration Judge to further consider the respondent's motion to reopen based on changed country conditions. *See Matter of J-G-*, 26 I&N Dec. at 163 (holding that an alien who is subject to an in absentia removal order need not first rescind the order before seeking reopening of the proceedings to apply for asylum and withholding of removal based on changed country conditions).

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER 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.

Teresa L. Doherty

FOR THE BOARD