



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: A [REDACTED] -G [REDACTED], J [REDACTED]

A [REDACTED] 11

Date of this notice: 5/20/2015

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.
Holmes, David B.
O'Herron, Margaret M

Userteam: Docket

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Falls Church, Virginia 20530

File: [REDACTED] 711 – Atlanta, GA

Date: **MAY 20 2015**

In re: [REDACTED] a.k.a. [REDACTED]
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Rebeca E. Salmon, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Continuance; remand

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's December 9, 2014, decision ordering him removed from the United States to Guatemala. The appeal will be sustained and the record will be remanded to the Immigration Judge for further proceedings.

We review an Immigration Judge's findings of fact, including credibility determinations, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The record reflects that the respondent appeared pro se on October 16, 2014, and was granted a continuance to seek counsel (Tr. at 2). On November 13, 2014, the respondent appeared with counsel, who indicated that the respondent was seeking Special Immigrant Juvenile ("SIJ") status (Tr. at 4-5). The Immigration Judge granted a continuance until December 9, 2014, advising the respondent to be prepared to file all applications for relief at that hearing (I.J. at 2; Tr. at 6). At the respondent's December 9, 2014, hearing, the Immigration Judge requested a copy of the dependency petition filed with the state court (I.J. at 2; Tr. at 8).¹ The respondent, through counsel, declined to provide the petition and objected to the Immigration Judge's request to do so (I.J. at 2; Tr. at 8). The Immigration Judge ordered the respondent, who admits the allegations and concedes removability as charged, removed (I.J. at 1-2; Tr. at 8; Exh. 2).


¹ A necessary precondition to Special Immigrant Juvenile status is the declaration of a juvenile court that the respondent is deserving of protection because reunification with his parents was not viable due to abuse, neglect, or abandonment. See section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J).

On appeal, the respondent argues that the Immigration Judge (1) erred in requiring him to produce his juvenile state dependency petition because doing so would violate the Georgia Juvenile Code and the Georgia Rules of Professional Conduct and the petition is unnecessary to establish his prima facie eligibility for SIJ status;² (2) violated his due process rights to a fair opportunity to apply for available relief, to a fair hearing before an impartial arbiter,³ and to equal protection under the law, and (3) abused his discretion by refusing to grant the respondent a continuance to allow him to file for SIJ status (Resp. Br. at 1, 3, 6-18). The respondent has submitted evidence on appeal that, subsequent to the Immigration Judge's decision, he filed a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) and an Application to Register Permanent Residence or Adjust Status (Form I-485) with United States Citizenship and Immigration Services ("USCIS") (Resp. Br. at Tabs L-M).

Considering this new evidence that the respondent's application for SIJ status is now pending with USCIS, we will remand these proceedings to allow the respondent the opportunity to request a continuance or administrative closure while he pursues SIJ status with USCIS. See *Matter of Sanchez-Sosa*, 25 I&N Dec. 807, 815 (BIA 2012) ("As a general rule, there is a rebuttable presumption that an alien who has filed a prima facie approvable application with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time.") (internal citation omitted); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) (discussing the standards for administratively closing proceedings); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (setting forth a framework to analyze whether good cause exists to continue proceedings to await adjudication by USCIS of a pending family-based visa petition). In light of our disposition of this appeal, we decline to address the additional arguments raised by the respondent on appeal. Accordingly, the following orders will be entered.

ORDER: The motion to remand is granted.

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


FOR THE BOARD

² The respondent maintains that he offered to file a hearing notice indicating that his dependency hearing was scheduled for December 23, 2014, and that this hearing notice is prima facie evidence of dependency (Resp. Br. at 2-3, 11-13; Notice of Appeal, Tab G).

³ The respondent alleges that portions of his proceedings were not recorded (Resp. Br. at 15). We point out that the regulations provide that the hearing shall be recorded verbatim, except for certain off-the-record statements or where the Immigration Judge, in his discretion, excludes "arguments made in connection with motions, applications, request, or objections, but in such event the person affected may submit a brief." 8 C.F.R. § 1240.9. We have noted the difficulties presented on appeal when a hearing is not recorded verbatim in accordance with the regulations. See *Matter of Garcia-Reyes*, 19 I&N Dec. 830, 832 (BIA 1988).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

File: [REDACTED] 11

December 9, 2014

In the Matter of

[REDACTED])
[REDACTED]) IN REMOVAL PROCEEDINGS
[REDACTED])
RESPONDENT)

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act.

APPLICATION: None.

ON BEHALF OF RESPONDENT: REBECCA SALMAN
P.O. Box 1614
Norcross, GA

ON BEHALF OF DHS: ABBY MEYER, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

This case came before the Court as the result of a Notice to Appear issued by the Department of Homeland Security. The charging document alleges that respondent is a native and citizen of Guatemala, and that he is removable from the United States pursuant to Section 212 of the Immigration and Nationality Act. The respondent admits the factual allegations in the Notice to Appear and concedes removability. In light of the foregoing, the Court finds by clear and convincing evidence that the respondent is removable from the United States as charged. The Court sustains the charge of

removal and designates Guatemala.

The case was last before the court on November 13, 2014. At that time, the Court advised the respondent, through counsel, that he should be prepared to file a copy of a petition for dependency if that is, in fact, the case, along with evidence that the document has been receipted by the Court. The purpose for the Court asking for this document is to see the nature of the claim made before the State Court and whether respondent has a prima facie eligible for relief. Respondent has advised the Court today that he does not wish to provide the document and questions the Court's authority to make the request. The Court finds that the respondent has not complied with the request and there not any evidence in this case that the respondent has set forth a prima facie case for relief.

The Court will enter the following order.

ORDER

IT IS HEREBY ORDERED that respondent be removed from the United States based on the charge set forth in the Notice to Appear and that he be deported to Guatemala.

Please see the next page for electronic

signature

EARLE B. WILSON
Immigration Judge

//s//

Immigration Judge EARLE B WILSON

wilsons on February 6, 2015 at 4:54 PM GMT