



**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 20530

**Perretta, Leonor  
Perretta Law Office  
8831 S. Redwood Road  
Suite A  
West Jordan, UT 84088**

**DHS/ICE Office of Chief Counsel - SLC  
2975 Decker Lake Dr. Stop C  
West Valley City, UT 84119**

**Name: BENITEZ-LOPEZ, J. GERMAN**

**A 092-298-255**

**Date of this notice: 5/29/2014**

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.  
Kendall-Clark, Molly  
Neal, David L

schwarzA  
User team: Docket

For more unpublished BIA decisions, visit [www.irac.net/unpublished](http://www.irac.net/unpublished)





**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 20530

**BENITEZ-LOPEZ, J. GERMAN  
A092-298-255  
2975 S. DECKER LAKE DRIVE STOP A  
WEST VALLEY CIT, UT 84119**

**DHS/ICE Office of Chief Counsel - SLC  
2975 Decker Lake Dr. Stop C  
West Valley City, UT 84119**

**Name: BENITEZ-LOPEZ, J. GERMAN**

**A 092-298-255**

**Date of this notice: 5/29/2014**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). 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 the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Greer, Anne J.  
Kendall-Clark, Molly  
Neal, David L

schwarzA  
Userteam: Docket

Falls Church, Virginia 20530

---

File: A092 298 255 – West Valley, UT

Date: MAY 29 2014

In re: J. GERMAN BENITEZ-LOPEZ a.k.a. Ferman Benitez Lopez  
a.k.a. German Lopez Benitez a.k.a. Ferman Benitezlopez

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENT: Leonor Perretta, Esquire

ON BEHALF OF DHS: Jeffrey D. Clark  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -  
Crime involving moral turpitude (withdrawn)

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Present without being admitted or paroled (withdrawn)

Lodged: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -  
In the United States in violation of law (conceded)

APPLICATION: Administrative closure

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s January 9, 2014, decision administratively closing the respondent’s removal proceedings. The record will be remanded.

We review findings of fact, including credibility findings, under the “clearly erroneous” standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

Relying on this Board’s decision in *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), the Immigration Judge ordered that the removal proceedings be administratively closed due to issues involving the respondent’s mental competency (Order of the Immigration Judge, dated January 9, 2014). The record reflects that the respondent, through counsel, had asserted that administrative closure was an appropriate safeguard under the circumstances, given the Immigration Judge’s finding of mental incompetency (Respondent’s Objection to DHS Motion to Recalendar, filed November 15, 2013).

On appeal, the DHS argues that the Immigration Judge erred in finding the respondent mentally incompetent without considering medical evidence in the record (DHS Brief at 10–11). The DHS also argues that, upon finding the respondent incompetent, the Immigration Judge should have assessed alternative safeguards (DHS Brief at 11–16). Moreover, the DHS contends that administrative closure was not appropriate in this matter, in view of the factors set forth in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) (DHS Brief at 16–20).

As an initial matter, we acknowledge the respondent's argument that the Board should not entertain the DHS's interlocutory appeal, as he asserts that it does not raise an important jurisdictional question or a recurring problem in the Immigration Judges' handling of cases (Respondent's Brief). See, e.g., *Matter of Guevara*, 20 I&N Dec. 238 (BIA 1990, 1991); *Matter of Dobere*, 20 I&N Dec. 188 (BIA 1990). Although this Board does not ordinarily entertain interlocutory appeals, we find that a review of the instant appeal is warranted, inasmuch as it raises an important question regarding the administration of the immigration laws in proceedings involving a respondent deemed mentally incompetent. Cf. *Matter of Avetisyan*, *supra*, at 689 (electing to address an interlocutory appeal from an Immigration Judge's decision to administratively close proceedings because it "raise[d] an important question regarding the administration of proceedings under our immigration laws").

We find that the DHS has not identified any clear error in the Immigration Judge's determination that the respondent was incompetent to participate in removal proceedings. See generally *Maggio v. Fulford*, 462 U.S. 111, 117 (1983) (describing a finding of competence as a "factual conclusion"). There is no indication from the record that the Immigration Judge failed to consider the medical documentation, which was admitted into evidence at a hearing on November 26, 2013 (Exh. 12, Tabs A–B). Although the DHS argues that the Immigration Judge should have further questioned the respondent at the January 9, 2014, hearing, the DHS has not identified clear error in the Immigration Judge's competency determination, where a competency inquiry was conducted and the respondent was deemed unable to meaningfully communicate with counsel (DHS Brief at 9–11; Respondent's Brief). See *Matter of M-A-M-*, *supra*, at 479 (stating that competency includes the ability to "consult with the attorney . . . if there is one").

However, upon *de novo* review, we conclude that a remand is warranted for further assessment of potential safeguards available to protect the respondent's rights and privileges in removal proceedings. See *id.* at 481 (citing section 240(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(3)). Aside from citing *Matter of M-A-M-*, the Immigration Judge did not provide specific reasoning in his decision to order administrative closure. See *Matter of M-A-M-*, *supra*, at 483 (stating that "[t]he Immigration Judge must articulate his or her reasoning for the decision" to utilize safeguards). In *Matter of M-A-M-*, we recognized that administrative closure may constitute a proper alternative in the event that efforts to secure appropriate safeguards prove inadequate. See *id.* In the instant matter, the record does not reflect a determination as to the adequacy of potential safeguards that might ensure the respondent's ability to proceed with a full and fair hearing.

Therefore, on remand, the Immigration Judge should assess whether there are measures available that would enable the respondent to proceed with a fundamentally fair hearing. As discussed in *Matter of M-A-M-*, the Immigration Judge and the parties may seek to explore options, such as the facilitation of medical treatment for the respondent or a venue change to

enable the respondent to be closer to family members who might assist him. *See id.* at 481, 483. In any event, the Immigration Judge will articulate the rationale behind his decision to utilize a particular safeguard or deem the available safeguards inadequate. *See id.* at 483.

To the extent that the DHS relied upon *Matter of Avetisyan, supra*, we note that this decision, while relevant, does not address important factors that arise in cases involving competency. The *Avetisyan* factors should be considered within the context of the competency issues involved in this case. *See id.* (stating that “each situation must be evaluated under the totality of the circumstances of the particular case”). Administrative closure in cases involving competency issues may provide an opportunity for a respondent to be restored to competency. In *Matter of M-A-M-, supra*, we observed that administrative closure could be appropriate in some cases involving incompetent aliens, “while other options are explored, such as seeking treatment for the respondent.” *Matter of M-A-M-, supra* at 483. The reason for granting administrative closure in such cases is qualitatively different from, for example, cases where an alien is awaiting the availability of a visa that may not be current for years, or where administrative closure is sought for a purely speculative event, such as possible new legislation. *See Matter of Avetisyan, supra*, at 696. Therefore, the Immigration Judge should “weigh all relevant factors presented in the case” when assessing whether administrative closure is appropriate. *See Matter of Avetisyan, supra*, at 696.

In light of the foregoing, we will vacate the Immigration Judge’s decision to administratively close this matter and remand the record for further proceedings.<sup>1</sup> Accordingly, the following orders will be entered.

ORDER: The Immigration Judge’s decision administratively closing the respondent’s removal proceedings is vacated.

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.

  
\_\_\_\_\_  
FOR THE BOARD

<sup>1</sup> Given the nature of this appeal, we do not address the parties’ arguments regarding whether the respondent has been convicted of an aggravated felony, as the Immigration Judge has not addressed that issue in the first instance.