



**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

**CHAUDHRY, MISBAH IRFAN  
Law Offices of Misbah Chaudhry  
11511 Katy Freeway  
Ste # 500  
Houston, TX 77079**

**DHS/ICE Office of Chief Counsel  
Montgomery Proc Ctr, 806 Hilbig Rd  
Conroe, TX 77301**

**Name: S [REDACTED], C [REDACTED]**

**A [REDACTED]-971**

**Date of this notice: 4/22/2019**

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:  
Guendelsberger, John  
Grant, Edward R.  
Kendall Clark, Molly

Userteam: Docket

For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

Falls Church, Virginia 22041

File: A [REDACTED]-971 – Conroe, TX

Date:

APR 22 2019

In re: C [REDACTED] S [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Misbah Chaudhry

ON BEHALF OF DHS: Adam Jovanovic  
Assistant Chief Counsel

APPLICATION: Remand

The respondent is a native and citizen of India. He was apprehended entering the United States illegally, served with a Notice to Appear, and placed in proceedings. Removability is not disputed. The Immigration Judge deemed his application abandoned for failure to file it by the deadline, and ordered him removed. The respondent filed a timely appeal. The appeal will be sustained.

At his first hearing on September 26, 2018, the respondent was advised of his right to obtain counsel, at no cost to the government, and warned that if he returned without counsel, the respondent would have to represent himself (Tr. at 2). A little over a week later, the respondent appeared at his second hearing. The respondent indicated that he had hired an attorney in New York. However, since the attorney had not entered an appearance or appeared, the Immigration Judge proceeded without the attorney.

After the respondent conceded removability at his second hearing, the Immigration Judge gave the respondent until October 18, 2018, to file his asylum application and related documents by mail. In addition, the individual hearing on the merits was set for October 31, 2018. The respondent did not file the asylum application by October 18, 2018, the due date given for filing. On October 29, 2018, the Immigration Judge issued a written order deeming the application abandoned and ordering the respondent removed.

On appeal, the respondent contends that his due process rights were violated. Aliens in removal proceedings are entitled to due process. *See Manzano-Garcia v. Gonzales*, 413 F.3d 462, 470 (5th Cir. 2005). While an alien has no Sixth Amendment right to counsel in an immigration proceeding, it is possible for “the absence of an attorney [to] create a due process violation if the defect impinged upon the fundamental fairness of the hearing in violation of the fifth amendment, and there was substantial prejudice.” *Ogbemudia v. INS*, 988 F.2d 595, 598 (5th Cir. 1993) (internal quotation marks and citation omitted).

Contrary to the respondent’s argument, we find no violation of fundamental fairness at the October 4, 2018, hearing. In response to questions from the Immigration Judge, the respondent conceded the facts underlying his removability (Tr. at 4-9). There has not been a showing of substantial prejudice because the respondent does not dispute removability on appeal.

While the opportunity to file an application shall be deemed waived if not filed within the time set by the Immigration Judge, *see Matter of R-R-*, 20 I&N Dec. 547, 549 (BIA 1992); 8 C.F.R. § 1003.31(c), we find that the alien's due process rights were violated here because there was no notice of the consequences of not filing an application by the due date. The respondent, who was pro se and detained, did not receive a specific warning of the consequences of not filing his application by the required due date, either orally or in writing. Since the lack of a warning was fundamentally unfair and the respondent suffered substantial prejudice, the appeal is sustained.<sup>1</sup> The following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded for further proceedings in accordance with this decision.

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

<sup>1</sup> We also note that the time given for the detained respondent to complete his application, including the need to obtain documents from India (and have them translated if necessary), was 22 days. We further note that the Immigration Judge appears to have made both an adverse credibility determination, and a preliminary determination of the merits of the respondent's claim, without the benefit of the respondent's application or his full testimony (Tr. at 15).