



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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**DHS/ICE Office of Chief Counsel - CHL  
5701 Executive Ctr Dr., Ste 300  
Charlotte, NC 28212**

**Name: M [REDACTED] -M [REDACTED], C [REDACTED]... A [REDACTED] -189**

**Date of this notice: 3/15/2017**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby  
Acting Chief Clerk

Enclosure

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

Userteam: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED] 189 – Charlotte, NC

Date: **MAR 15 2017**

In re: C [REDACTED] E [REDACTED] M [REDACTED] - [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Paul M. Carruthers, Jr., 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 (sustained)

APPLICATION: Continuance

The respondent, a minor, and a native and citizen of Honduras, appeals from the Immigration Judge's July 13, 2016, decision denying her motion for a continuance and ordering her removed from the United States. 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, for clear error. 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 respondent is an unaccompanied minor who was 13 years old when she was placed in removal proceedings. Through counsel, the respondent indicated she intended to seek Special Immigrant Juvenile (SIJ) status. *See* section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J). The respondent was given three continuances to obtain a state court dependency order required to advance the SIJ application.<sup>1</sup> On July 13, 2016, the respondent through counsel sought an additional continuance. The respondent claimed that she was having difficulty serving the state court petition on her father in Honduras, a necessary condition for moving forward in the state court proceeding (Tr. at 26-27). Respondent's counsel indicated that service had recently been effectuated and the state court proceedings could move forward (Tr. at 27-28). The Immigration Judge concluded that the respondent did not proffer sufficient corroborative evidence to support her motion. The Immigration Judge denied the

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<sup>1</sup> A necessary precondition to SIJ status is the declaration of a juvenile court that the respondent is deserving of protection because reunification with his or her parents was not viable due to abuse, neglect, or abandonment. *See* section 101(a)(27)(J) of Act.


motion, found the respondent inadmissible as alleged in the Notice to Appear, and ordered the respondent removed to Honduras (I.J. at 1-2; Tr. at 28-30).

We conclude that the Immigration Judge erred in denying the respondent's motion for a continuance because the respondent established good cause. *Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987); 8 C.F.R. §§ 1003.29, 1240.6. While the Immigration Judge is correct that the record does not contain evidence that the respondent's father in Honduras has been served, it does reflect that a complaint for dependency was pending in a South Carolina family court and that the respondent has been actively pursuing the state court petition. We conclude that under the particular circumstances presented in this case, the pendency of this action in state court constitutes good cause for continuing this matter.

In this regard, we note that guidance provided to Immigration Judges by the Chief Immigration Judge states that if an unaccompanied child is seeking SIJ status, "the case must be administratively closed or reset for that process to occur in the appropriate state or juvenile court." See Memorandum from Brian M. O'Leary, Chief Immigration Judge, to Immigration Judges (Mar. 24, 2015) (Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities). Thus, in the remanded proceedings, the Immigration Judge should consider whether additional continuances or administrative closure of these proceedings is warranted after the parties have had an opportunity update the record regarding the status of the state court proceedings and any application for SIJ status that may now be pending. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

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

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
CHARLOTTE, NORTH CAROLINA

File: A-189

July 13, 2016

In the Matter of

C E M-M )  
RESPONDENT ) IN REMOVAL PROCEEDINGS )

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: MATTHEW CARRUTHERS

ON BEHALF OF DHS: HILARY RAINONE

ORAL DECISION OF THE IMMIGRATION JUDGE

Now comes accord upon the respondent's motion to continue these proceedings while she pursues a state court action in South Carolina to obtain a child custody order in support of a potential application with the United States Citizenship and Immigration Services for Special Immigrant Juvenile Status. The Court finds that the respondent has been in removal proceedings since May 20, 2014 when her Notice to Appear was served upon her. The Court resolved the respondent's pleas to the Notice to Appear at a hearing on July 6, 2015. The Court finds it has been liberal in granting continuances in this case while the respondent has pursued the supporting documents for a potential

application for Special Immigrant Juvenile Status to be submitted to the USCIS. The Court granted a continuance in a written order on March 15, 2016, at which time it advised the parties that no further continuances will be granted in the absence of a pending Form I-360 with the United States Citizenship and Immigration Services.

At today's hearing the Court has been provided with a litany of reasons, through the respondent's counsel, as to why the service of the state child custody complaint was difficult to serve on the respondent's father who apparently, according to counsel, is incarcerated in Honduras. The respondent's counsel also averred difficulties he has had with the court appointed guardian ad litem in South Carolina in obtaining their assistance in the respondent's effort to obtain the child custody order. The Court notes that all of this information came through counsel as an averment and was not supported and supplied to the record with written documents for the Court to review.

The Court accordingly finds that good cause has not been shown for further continuances in this case in the absence of evidence for the Court's review for the record. The Court notes that the respondent, even with an order of removal, may still pursue relief through Special Immigrant Juvenile Status applications even though she is subject to a removal order. The Court notes that the pertinent law applicable to the Court's consideration of the factors related to the respondent's motion for continuance are contained in Matter of Sanchez Sosa.

Accordingly, for the foregoing reasons the Court denies the respondent's motion to continue.

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V. STUART COUCH  
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE V. STUART  
COUCH, in the matter of:

C [REDACTED] E [REDACTED] M [REDACTED] - M [REDACTED]

A [REDACTED] -189

CHARLOTTE, NORTH CAROLINA

was held as herein appears, and that this is the original transcript thereof for the file of  
the Executive Office for Immigration Review.

Charlene Brown

CHARLENE BROWN (Transcriber)

FREE STATE REPORTING, Inc.-2

SEPTEMBER 4, 2016

(Completion Date)