



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: CASTILLO RODRIGUEZ, LEONI...**

**A 208-908-008**

**Date of this notice: 12/26/2018**

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:  
Kelly, Edward F.  
Adkins-Blanch, Charles K.  
Geller, Joan B

Userteam: Docket

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Falls Church, Virginia 22041

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File: A208-908-008 – Buffalo, NY

Date:

DEC 26 2018

In re: Leonides CASTILLO RODRIGUEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carol C. Livsey, Esquire

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's written decision dated November 7, 2017, denying as abandoned her application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Department of Homeland Security has not filed an appeal brief. The appeal will be sustained, and the record will be remanded for further proceedings.

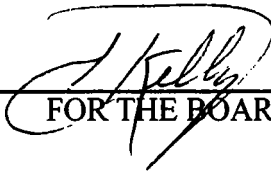
The Immigration Judge properly determined that the respondent had abandoned her application for relief because she did not submit the application by the filing due date, request an extension, or present a good reason for failing to file on time. However, the respondent argues on appeal that she did not abandon her application for cancellation, but timely filed her application with the Department of Homeland Security, Citizenship and Immigration Service (CIS) on September 29, 2017, within the October 16, 2017, deadline set by the Immigration Judge. The respondent also provides receipt notices for her cancellation application and her application for adjustment of status.

An Immigration Judge has the authority to deny as abandoned an application for relief that is not filed within the time period set by the Immigration Court. *See Matter of Jean*, 17 I&N Dec. 100 (BIA 1979), *modified*, *Matter of R-R-*, 20 I&N Dec. 547 (BIA 1992); *see also* 8 C.F.R. § 1003.31(c) ("If an application or document is not filed within the time set by the Immigration Judge, the opportunity to file that application or document shall be deemed waived.").

Based on the particular circumstances of this case, however, we conclude that a remand is appropriate. As noted above, the respondent presented evidence on appeal reflecting that she filed her application for cancellation of removal with the CIS by the deadline set by the Immigration Judge. The respondent also notes that she requested the initiation of removal proceedings so that she could legalize her status, which is further evidence of her genuine intent to pursue relief from removal. Accordingly, the appeal will be sustained, and the record will be remanded for consideration of the respondent's cancellation application, and for any other relief to which she may be entitled.

ORDER: The respondent's appeal is sustained.

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

  
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FOR THE BOARD