



U.S. Department of Justice

Executive Office for Immigration Review

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**Name: AHIR, NILESH HASMUKHBHAI
Riders:096-348-640 096-348-713**

A 096-348-639

Date of this notice: 11/16/2012

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**

**schwarzA
Userteam: Docket**

Immigrant & Refugee Appellate Center | www.irac.net

Donna Carr

Falls Church, Virginia 22041

File: A096 348 639 - Los Angeles, CA
A096 348 640
A096 348 713

Date: NOV 16 2012

In re: NILESH HASMUKHBHAI AHIR
HIMANSHI NILESH AHIR
NITA MOHANLAL PATEL

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Carolina Ortúzar-Díaz, Esquire

APPLICATION: Continuance; administrative closure; remand

The respondents have filed a timely appeal of the Immigration Judge's decision dated November 21, 2011, denying their request for a continuance or for administrative closure. During proceedings below, the Immigration Judge indicated that the respondents would be eligible for voluntary departure if they agreed to waive appeal. When the respondents indicated that they would not waive appeal, there was no discussion or consideration of eligibility for voluntary departure at the completion of proceedings under section 240B(b) of the Immigration and Nationality Act. We recently held that if a respondent indicates that he or she will not waive appeal and is therefore ineligible for a grant of voluntary departure prior to the completion of proceedings under section 240B(a) of the Act, the Immigration Judge should also consider the respondent's eligibility for voluntary departure at the conclusion of proceedings under section 240B(b) of the Act. *Matter of C-B-*, 25 I&N Dec. 888, 891 (BIA 2012). As it appears that the respondents may have been eligible for voluntary departure under section 240B(b) of the Act, we will remand to the Immigration Judge for further consideration of eligibility for voluntary departure.

On appeal, the respondents assert that the Immigration Judge's order denied the request for administrative closure solely because it was opposed by the Department of Homeland Security ("DHS"), without setting forth the DHS' reasons for their opposition, and without weighing the factors for and against administrative closure in this case. Due to our limited fact-finding authority under 8 C.F.R. § 1003.2(c)(3)(i), and in light of our recent decision in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), on remand the Immigration Judge should consider the factors set forth in *Matter of Avetisyan*, *supra*, regarding whether the case should be administratively closed at this time. The respondents have proffered new evidence on appeal, which the Immigration Judge may consider upon remand, along with any other evidence or arguments proffered upon remand. This should include consideration of whether the youngest respondent is eligible for Consideration of Deferred Action for Childhood Arrivals, pursuant to the June 15, 2012 announcement of the Secretary of the Department of Homeland Security (DHS).

ORDER: The record is remanded to the Immigration Court for further action not inconsistent with the foregoing opinion.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File: A096-348-639

November 21, 2011

In the Matter of

NILESH HASMUKHBHAI AHIR)	
)	IN REMOVAL PROCEEDINGS
RESPONDENT)	

CHARGES: Section 237(a)(1)(B) of the Immigration and
Nationality Act, as amended, in that after
admission as a non-immigrant under Section
101(a)(15) of the Act, ~~you have remained in the~~
United States for a time longer than permitted.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: SARAH MONTY

ON BEHALF OF DHS: MARK TOMINES

ORAL DECISION OF THE IMMIGRATION JUDGE

INTRODUCTION - PROCEDURAL SUMMARY

Respondents are a husband, wife and 12-year-old
daughter, all natives and citizens of India. The United States
Department of Homeland Security has brought these removal
proceedings against respondents under the authority of the

Immigration and Nationality Act (Act or INA). Proceedings were commenced with the filing of the Notices to Appear with the Immigration Court. See Exhibit 1A, 1B, and 1C. All three respondents admit as alleged in their Notices to Appear that they are not citizens or nationals of the United States, but are natives and citizens of India. Moreover, they all admit that they came into the United States on September 27, 2003, as non-immigrants with authorization to remain in the United States for a temporary period, that they all remained past that period, and that their application for adjustment of status to that of a lawful permanent resident was denied on March 18, 2009, by the Department of Homeland Security. Moreover, all three respondents concede that they are removable as charged pursuant to Section 237(a)(1)(B) of the Act in that at any time after admission as non-immigrants, they remained in the United States for a time longer than permitted.

Respondents initially appeared before the Court on January 11, 2011, at that time represented by counsel. They requested some time to prepare in the case. The Court did continue the case until April 1, 2011. Due to this Court's absence on that date, the case was continued until May 27, 2011, at 8:30. The Court received a request for a continuance on that day in court because, as conceded by their attorney of record, respondents were not eligible for any relief from removal except voluntary departure. Respondents, however, needed some time to

wrap up their affairs and to pursue possibly labor certifications and possible adjustment of status. Counsel requested from this Court one continuance to allow them to do all that before qualifying her clients for voluntary departure. The Court granted respondents' request and continued the case until August 10, 2011.

On August 4, 2011, the Court received a second motion to continue from respondents alleging they needed more time. The Court granted that request and continued the case until today's date, November 21, 2011. By order dated August 4, 2011, the Court warned respondents and counsel that no further continuances would be granted for this purpose and that if they changed their mind regarding their sole request for pre-hearing voluntary departure, that any and all relief applications should be ready for filing at the November 21, 2011, hearing.

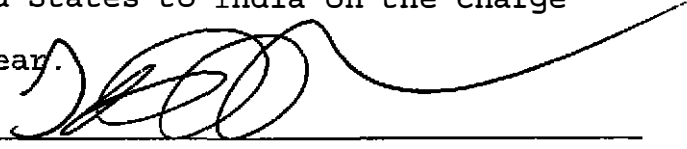
Prior to the hearing on November 21, 2011, the Court received another request for a continuance or to administratively close proceedings. As there was no joint motion to administratively close and because the Court had already notified respondents that no further continuances would be granted, the Court denied respondents' request and warned counsel and respondents to be present at the November 21, 2011, hearing. At the hearing on today's date, all parties were present and again counsel on behalf of respondents requested a continuance to allow respondents to continue with their request

for prosecutorial discretion through DHS. The Court confirmed with DHS counsel that no request for prosecutorial discretion had been granted at this time and that they were not willing to administratively close the case. When questioned when there was any other basis for a continuance other than those that had been mentioned in the motion to continue and the request for prosecutorial discretion, respondents' counsel stated no other ~~than~~ urging this Court to continue the case for the prosecutorial discretion requested as pending before DHS. The Court denied respondents' request for a continuance and inquired with counsel whether any form of relief would be applied for. Counsel stated that they would no longer be requesting pre-hearing voluntary departure and instead requested this Court enter an order and reserve appeal on their behalf.

As no requests for relief are pending before this Court, and as this Court has found respondents to be removable as charged based on the admissions and concessions by counsel, the Court finds that it has no alternative but to enter an order of removal against all three respondents.

ORDER

IT IS HEREBY ORDERED that all respondents shall be ordered removed from the United States to India on the charge contained in the Notice to Appear.


TARA NASELOW-NAHAS
United States Immigration Judge

CERTIFICATE PAGE


I hereby certify that the attached proceeding before JUDGE
TARA NASELOW-NAHAS, in the matter of:

NILESH HASMUKHBHAI AHIR

A096-348-639

LOS ANGELES, CALIFORNIA

is an accurate, verbatim transcript of the recording as provided
by the Executive Office for Immigration Review and that this is
the original transcript thereof for the file of the Executive
Office for Immigration Review.



Susan Ardoin

SUSAN ARDOIN (Transcriber)

DEPOSITION SERVICES, Inc.

FEBRUARY 20, 2012

(Completion Date)