



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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P.O. Box 8728
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Name: NKRAWIRE, NANA KWADWO B... A 096-716-342

Date of this notice: 9/15/2014

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:
Guendelsberger, John
Hoffman, Sharon
Manuel, Elise

William

Userteam: Docket

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Falls Church, Virginia 20530

File: A096 716 342 – Boston, MA

Date: SEP 15 2014

In re: NANA KWADWO BADU NKRAWIRE a.k.a. Nana Badu Nkrawire
a.k.a. Nana Nkrawire Badu a.k.a. Nana Nkawire a.k.a. Nana Nkrawie

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Aurora Terpollari, Esquire

ORDER:

The respondent, a native and citizen of Ghana, appeals from the Immigration Judge's decision dated August 6, 2013, which found that he abandoned any opportunity to seek relief and ordered him removed. The Department of Homeland Security has not replied to the respondent's arguments on appeal. The appeal will be sustained in part and the record remanded.

We review Immigration Judges' findings of fact for clear error, but we review questions of law, discretion, and judgment, and all other issues in appeals de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The record shows that during the March 13, 2013, hearing, the Immigration Judge instructed the respondent and his then counsel to file, at least 15 days in advance of the August 6, 2013, hearing, declarations from the respondent and his spouse in support of continuing proceedings to await the adjudication of a visa petition filed on his behalf, as well as a declaration from the respondent in support of his eligibility for voluntary departure (Tr. at 70-76). The respondent appeared at the August 6, 2013, hearing with new counsel, at which time it was noted that the requested declarations had not been filed as instructed (Tr. at 79-88).¹

We will reverse the Immigration Judge's determination with respect to voluntary departure. Inasmuch as there is no written application or statutory or regulatory requirement for an applicant to submit supporting declarations, we do not agree that the respondent abandoned his request for voluntary departure. Section 240B of the Immigration and Nationality Act, 8 U.S.C. § 1229c; 8 C.F.R. § 1240.26. We will remand the record so that the respondent may pursue any available relief. Accordingly, 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

¹ The record shows that the respondent's Motion for Substitution of Counsel was received on July 18, 2013, and granted on July 30, 2013.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

File: A096-716-342

August 6, 2013

In the Matter of

NANA KWADWO BADU NKRAWIRE

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act.

APPLICATIONS: Continuation of proceedings for adjudication of I-130 visa petition;
adjustment of status; voluntary departure.

ON BEHALF OF RESPONDENT: AURORA TERPOLLARI, Esquire

ON BEHALF OF DHS: MARY C. KELLEY, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is an adult male native and citizen of Ghana. The respondent was placed into removal proceedings through the issuance of a Notice to Appear dated August 10, 2009. See Exhibit No. 1. That document is also known as a Form I-862.

The respondent, through counsel, filed written pleadings in this case on October 6, 2010. See Exhibit 2. In those pleadings, the respondent, through counsel, admitted all of the allegations 1 through 4 and conceded removability under the one ground of removability, Section 237(a)(1)(B) of the Act. The respondent, through

counsel, did designate Ghana. Based upon those written pleadings, this Court does find that removability has been established by evidence that is clear and convincing and this Court will designate Ghana as the country for removal purposes.

Most recently this Court conducted a full Master Calendar hearing, which is recorded on the digital audio recordings, and that was on March 13, 2013. At that Master Calendar hearing, the respondent was present and his lawyer at the time, Elizabeth K. Kimundi, was present. The record reflects that the Court carefully went over with the respondent and counsel, more than once, what this Court required of the hearing today on August 6, 2013. The Court required that the respondent and counsel comply with the parameters set forth in Matter of Hashmi to convince this Court that the proceedings should be continued for the adjudication of a new I-130 that the respondent's wife was going to file on his behalf. The counsel at the time, Ms. Kimundi, informed the Court that the respondent's wife had recently been released from incarceration on December 28, 2012. This Court specifically ordered a declaration to be completed by the respondent and his spouse, that all evidence be submitted along with the declarations 15 days before today's hearing in support of the respondent's motion that these proceedings should be continued for the new I-130 visa petition. The Court warned the respondent and counsel that if the respondent did not submit his documents, declarations and so on for the Matter of Hashmi hearing today, that this Court would find the Matter of Hashmi hearing to be abandoned; that is, the respondent's request for a continuation of the proceedings to be abandoned. The Court further then ordered the respondent to submit a declaration setting forth his statutory eligibility and eligibility as a matter of discretion, essentially his eligibility for voluntary departure. The Court also warned the respondent and counsel that if the respondent failed to submit a declaration setting forth his eligibility for voluntary departure 15 days

before today's hearing, the Court would find the respondent's voluntary departure application abandoned. The Court engaged in a colloquy specifically with the respondent after the orders were given asking the respondent if he understood the orders that the Court gave. He indicated that he did. The Court, in the colloquy, asked the respondent if he understood what his attorney said and agreed with what his attorney said to the Court. He indicated that he did. The hearing was then adjourned.

The only document that the Court has received from respondent is a motion for substitution of counsel from counsel who is present here today. Counsel present today is Aurora Terpollari. She admits that neither the respondent nor she has complied with this Court's orders of March 13, 2013. She reports to the Court that the respondent's wife is now reincarcerated, this time in a different location, this time in Florida. The Court stopped the hearing at that point and played the tape back of the March 13, 2013, Master Calendar hearing for both the respondent and his new counsel and then went back on the record without discussing the case off the record. The Court first inquired of new counsel why I should not find the respondent's motion to continue these proceedings abandoned, his voluntary departure application abandoned and why I should not simply order him removed to Ghana. Respondent's new counsel has also informed the Court that a new I-130 was filed on April 22, 2013, but the Court has not been provided with evidence of that. That is not ultimately dispositive of the case.

What is dispositive of the case is the fact that this case is being heard in the First Circuit Court of Appeals. The First Circuit Court of Appeals has been very clear in a recent published decision, Gomez-Medina v. Holder, at 687 F.3d 33 (1st Cir. 2012), that the regulations and the law provide for the Court to set filing deadlines and issue reasonable orders. Specifically, the regulations at 8 C.F.R. 1003.31(c) provide that the Immigration Judge may set and extend time limits for the filing of applications and

related documents and responses thereto, if any. 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.

In this case this Court is not satisfied with either the explanation given by respondent's new counsel today or the respondent as to why this Court's orders were not followed.

First, respondent's counsel is attorney of record in this case. She is required to be familiar with the Record of Proceedings. This Court issued all of the orders for today's hearing on the record. Counsel has made no effort to review the record in this case; that is, to listen to what happened in the last hearing; but instead argues that she was not provided this information by previous counsel in the counsel, Elizabeth Kimundi or the Law Office of Eric Darko, and that she was not informed of the requirements for the hearing today. That is simply not acceptable. The counsel taking over the case must familiarize themselves with the record. The orders that this Court gave on March 13, 2013, apply to the hearing today. There is no reason for this Court not to enforce the orders given on March 13, 2013, as this Court finds no good cause to continue the proceedings today based upon the arguments of counsel.

The respondent makes a similar, yet unavailing argument, that he relied on previous counsel to file the documents in this case. However, the Court went over with the respondent at the hearing on March 13, 2013, whether he understood the orders for today. The respondent did indicate to the Court that he understood the orders for the hearing; that is, his Matter of Hashmi hearing and the orders relating to voluntary departure.

At best, the arguments of the respondent today and his new counsel are dilatory. There is simply no good cause for the failure to follow this Court's orders on March 13,

2013. New counsel filed her motion to substitute back on July 18, 2013. She has had more than enough time to review the Record of Proceedings in this case and to make a motion to continue to this Court, if that was necessary, before the deadline and/or to present good cause for continuing the case to the Court. She has not done that and in fact her arguments do not help her. Her arguments reveal that she has not taken the time to review the orders this Court has given on the record and neither she nor the respondent today present good cause for continuing the proceedings.

And, therefore, pursuant to the regulations, the Board decisions and the First Circuit decisions relating to abandonment of applications for relief for failing to file the Court's orders, this Court will find that the respondent has abandoned his opportunity to argue that the hearing should be continued to await the adjudication of the new I-130. This Court will find that the respondent has abandoned his opportunity to argue that he should be granted voluntary departure; that is, that he is statutorily eligible for voluntary departure and merits voluntary departure as a matter of discretion. This Court will find that although the respondent has applied for adjustment of status in his pleadings, he is not statutorily eligible for adjustment of status as the first I-130 filed has been denied and the second I-130 that has apparently been filed has not been adjudicated yet.

The respondent seeks no other relief before this Court and, therefore, this Court will enter the following orders:

ORDERS

IT IS HEREBY ORDERED that the respondent's motion to continue these proceedings be, and is, hereby deemed abandoned;

IT IS FURTHER ORDERED that the respondent's application for voluntary departure be, and is, hereby deemed abandoned;

IT IS FURTHER ORDERED that the respondent be ordered removed from the

United States to Ghana based upon the one charge contained in the Notice to Appear at Exhibit No. 1.

Please see the next page for electronic

signature

MATTHEW J. D'ANGELO
Immigration Judge

//s//

Immigration Judge MATTHEW J. D'ANGELO

dangelom on September 25, 2013 at 3:35 PM GMT

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