



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: G [REDACTED] - [REDACTED], R [REDACTED]

A [REDACTED] -732

Date of this notice: 10/28/2019

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:
Greer, Anne J.
Wendtland, Linda S.
O'Connor, Blair

Userteam: Docket

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PC

Falls Church, Virginia 22041

File: A [REDACTED]-732 – El Paso, TX

Date:

In re: R [REDACTED] G [REDACTED] -I [REDACTED]

OCT 28 2019

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jason F. Valentin, Esquire

ON BEHALF OF DHS: Michelle Morton
Assistant Chief Counsel

APPLICATION: Reopening; asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Guatemala, has appealed from the Immigration Judge's decision dated March 21, 2019. In that decision, the Immigration Judge denied the respondent's untimely motion to reopen, which was filed on March 8, 2019, more than 20 years after the respondent was ordered removed on October 15, 1998 (IJ at 1-2). *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.23(b)(1). For the following reasons, the respondent's appeal will be sustained, and the record will be remanded for further proceedings and the entry of a new decision.¹

The relevant procedural history is as follows. The removal proceedings were initiated with the filing of the Notice to Appear on August 17, 1998. Following the initial October 1, 1998, master calendar hearing, the respondent conceded removability, waived appeal, and accepted a final order of removal on October 15, 1998.

Although the record does not reflect exactly when, at some point after the entry of the removal order in 1998, the respondent's physical removal to Guatemala was effectuated. According to the respondent's I-589, Application for Asylum and for Withholding of Removal submitted in support of the March 8, 2019, motion to reopen, she illegally reentered the United States on September 28, 2001 (IJ at 1 n.1; Mot. to Reopen at Tab E).

On appeal, the respondent renews her claims for asylum under section 208 of the Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and withholding of removal under the Convention Against Torture. *See* 8 C.F.R. § 1208.16(c). In addition, she renews her request for reopening in order to pursue a T nonimmigrant visa under the Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, § 107, 114 Stat. 1464 (Oct. 28, 2000) ("VTVP") (Mot. to Reopen at Tab D; Respondent's Br. at 3). *See, e.g., Matter of Castro-Tum*, 27 I&N Dec. 271, 277-78 (A.G. 2018) (discussing "administrative closure"

¹ We note that the respondent has appended voluminous documentation to the Notice of Appeal and her subsequent appeal brief, much of which is duplicative of the documents already included in the Record of Proceeding. Although we cannot take new documentation into consideration on appeal, the Immigration Judge should consider it on remand.

under the VTVP); *see also* section 101(a)(26) of the Act, 8 C.F.R. § 1101(a)(26) (defining “nonimmigrant visa”).

The Immigration Judge denied the respondent’s motion to reopen because he concluded that the October 15, 1998, removal order has previously been reinstated by the Department of Homeland Security (“DHS”) (IJ at 2). *See* section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). However, having reviewed the record of proceeding, there is no evidence that the DHS has reinstated the prior removal order. Nor has the DHS presented any evidence of a previously reinstated removal order in support of its motion for summary affirmance.

We agree that, were the respondent subject to reinstatement of the prior removal order, the Immigration Judge would be without authority to reopen the removal proceedings. *See* section 241(a)(5) of the Act. But because there is no reinstated removal order in the record, the Immigration Judge’s conclusion that the proceedings cannot be reopened lacks foundation in law and fact.

Under the present circumstances, therefore, we will remand the case for the Immigration Judge to address the substantive merits of the respondent’s motion. We express no opinion on the ultimate resolution of the motion to reopen on remand.

Accordingly, the following order will be entered.

ORDER: The respondent’s appeal is sustained, and the record is remanded for further proceedings and the entry of a new decision.


FOR THE BOARD