



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

**VALLECILLA-GONZALEZ, FLOWER
A# 075-271-719
1800 INDUSTRIAL DRIVE
RAYMONDVILLE, TX 78580**

**DHS/ICE Office of Chief Counsel - HLG
P.O. Box 1711
Harlingen, TX 78551**

Name: VALLECILLA-GONZALEZ, FLOWER

A075-271-719

Date of this notice: 4/11/2011

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:

Cole, Patricia A.
Pauley, Roger
Wendtland, Linda S.

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AS

Falls Church, Virginia 22041

File: A075 271 719 - Raymondville, TX

Date: **APR 11 2011**

In re: FLOWER VALLECILLA-GONZALEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Mark R. Whitworth
Assistant Chief Counsel

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

The respondent appeals the Immigration Judge's October 25, 2010, decision which found the respondent removable as charged, concluded that any and all applications for relief were abandoned as the respondent had failed to submit any application for relief within the time prescribed, and ordered him removed to Colombia. The appeal will be sustained, and the record will be remanded.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(I). This Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

We understand and appreciate the circumstances that lead the Immigration Judge to deem the respondent's applications for asylum and cancellation of removal abandoned. *See Matter of R-R-*, 20 I&N Dec. 547 (BIA 1992) (providing that applications for benefits under the Immigration and Nationality Act are properly denied as abandoned when the alien fails to timely file them); 8 C.F.R. § 1003.31(c). In this regard, the record confirms that the Immigration Judge provided the respondent a deadline of October 25, 2010, to file his applications (Tr. at 5-6). However, we share the concern that the Immigration Judge's failure to advise the respondent of the consequences of his failure to timely submit his applications for relief, and that the respondent was unrepresented at the time, may have contributed to a misunderstanding of the nature of the proceeding. *See generally Matter of Sinclitico*, 15 I&N Dec. 320 (BIA 1975); 8 C.F.R. § 1240.4. This concern is reinforced by the respondent's apparent confusion during the October 25, 2010, hearing regarding the separate nature of bond and removal proceedings, as evinced by his attempt to discuss a bond reduction at his removal proceedings, as well as his later submission of an asylum application (Form I-589) with a request to reconsider his bond, which was attached to his Notice of Appeal (Tr. at 7-8).

While we are mindful of the Immigration Judge's need to process cases in a timely fashion, as well as the burdens placed on the respondent in this regard, under the circumstances presented here, we find it prudent to remand the record for further proceedings. On remand, the Immigration Judge shall consider any applications for relief available to the respondent and shall take appropriate measures to ensure that the respondent is provided an adequate hearing. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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



FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents without separate opinion.

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Harlingen, Texas

File A 75 271 719

Date: October 25, 2010

In the Matter of

FLOWER VALLECILLA-GONZALEZ

Respondent

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGE:

Section 212(a)(6)(A)(i) of the Immigration and
Nationality Act, present without being
admitted or paroled.

APPLICATION:

None

APPEARANCES:

ON BEHALF OF RESPONDENT:

Pro se

ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:

Nicole M. Gonzalez, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The Respondent is a male native and citizen of Columbia who was placed in removal proceedings when the Department of Homeland Security filed a Notice to Appear dated September 19, 2010. That was entered into the record as Exhibit #1. Respondent was advised of his rights including his right to counsel, present evidence and to examine the evidence of what's presented against

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him and his right to an attorney at no cost to the government and was provided the free legal services list. Respondent elected to go forward and represent himself. Respondent admitted the allegations contained in the Notice to Appear and conceded removability as charged. The Court finds that the Respondent's admissions and concessions constitutes sufficient evidence to find that Respondent's removability has been established by evidence that is clear and convincing. The Respondent declined to designate a country of removal and Columbia was designated. The Respondent stated that he feared returning to Columbia. The Respondent also stated the facts to the effect that he may be eligible to apply for cancellation of removal. At that point, the Respondent was provided with a copy of the Form 42-B application for cancellation of removal for certain nonpermanent residents and a copy of the application for asylum, Form I-589. His case was reset to give the Respondent an opportunity to file his applications.

On October 25, 2010, the Respondent appeared before the Immigration Judge. The Respondent had not filed any applications for relief. The Respondent stated that he wished to have his bond reduced. The Respondent was advised that removal proceedings are separate from bond proceedings and that the Court would not discuss his bond issue during the removal proceeding. The Respondent was then asked why he had not filed his applications. The Respondent stated that he didn't have an attorney and he

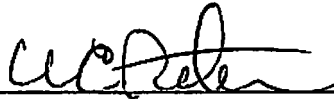
didn't know what applications he was to file. The Respondent was then reminded that he had been provided with a copy of the application for cancellation of removal and the asylum application at the previous hearing. The Respondent acknowledged receiving these applications but provided no explanation as to why his applications were not filed. The Respondent once again inquired as to his bond.

The Court notes that while the proceedings are separate and that the Respondent had previously had a Bond hearing and that the Respondent had been advised that his bond would not be able to be discussed during the removal proceedings. The Respondent was asked if he had anything further and the Respondent provided no further response regarding his applications.

The Court finds that the Respondent was provided with adequate opportunity to submit his applications for relief but failed to do so. No reasonable explanation was provided for his failure to do so and the Court finds that the Respondent's applications, any applications that he may have been eligible to file are deemed abandoned and denied for lack of prosecution. Because the Respondent has filed no applications for relief and his removability has been established, the following orders will be entered.

ORDER

IT IS HEREBY ORDERED that the Respondent be removed from the United States to Columbia on the charges contained in the Notice to Appear.



WILLIAM C. PETERSON
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
WILLIAM C. PETERSON, in the matter of:

FLOWER VALLECILLA-GONZALEZ

A 75 271 719

Harlingen, Texas

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

Rebecca L. Price

Rebecca L. Price, Transcriber

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November 26, 2010

Completion Date

rlp/mab