



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

**DELGADO-LOPEZ, MARCO
811 BELFAST ST
LEWISBURG, TN 37091**

**DHS/ICE Office of Chief Counsel - MEM
80 Monroe Ave., Ste 502
Memphis, TN 38102**

Name: DELGADO-LOPEZ, MARCO

A 205-152-331

Date of this notice: 11/12/2015

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:
Adkins-Blanch, Charles K.

Userteam: Docket

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Falls Church, Virginia 22041

File: A205 152 331 – Memphis, TN

Date:

NOV 12 2015

In re: MARCO DELGADO-LOPEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated September 3, 2014, which granted him voluntary departure under section 240B of the Immigration and Nationality Act, 8 U.S.C. § 1229c. The appeal will be sustained and the record remanded.

The record shows that, at the only master calendar hearing on June 18, 2013, the Immigration Judge questioned the respondent and granted him a continuance to seek an attorney (Tr. at 3). At the next hearing on September 3, 2014, the respondent appeared without counsel, though he indicated that he had sought representation, but was unable to find an affordable attorney (Tr. at 5). He also indicated that he feared returning to Mexico (Tr. at 8).

We find that granting a continuance to seek counsel in this instance would have been appropriate. *Matter of C-B-*, 25 I&N Dec. 888, 889-90 (BIA 2012). We determined in that case that an Immigration Judge must grant a reasonable and realistic period of time to provide a fair opportunity for the respondent to seek, speak with, and retain counsel.

We also determined in that case that if a respondent expresses a fear of persecution or harm in a country to which he might be removed, the regulations require the Immigration Judge to advise the respondent of the right to apply for asylum or withholding of removal (including protection under the Convention Against Torture), and make the appropriate application forms available. *See* 8 C.F.R. § 1240.11(c)(1)(i)–(ii); *see also* 8 C.F.R. §§ 1208.13, 1208.16, 1208.17.

In this case, the respondent was only provided with a single continuance for the purpose of retaining counsel. When the respondent expressed a fear of returning to Mexico, the Immigration Judge should have (1) advised the respondent that he could apply for asylum and withholding of removal, (2) asked him if he wished to apply for those forms of relief, and (3) made the required forms for applying for such relief available to him in order to comply with the requirements of 8 C.F.R. § 1240.11(c)(1)(i) and (ii). *Id.*

We acknowledge the Immigration Judge's basic inquiry at the merits hearing, which did not initially indicate that a protected ground would be one central reason for the respondent's fear of returning to Mexico. *See Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010). Nevertheless, the respondent was never advised that he could apply for asylum and withholding of removal, including asylum in the absence of a well-founded fear of persecution. *See* 8 C.F.R. § 1208(b)(1)(B)(iii). Thus, we will sustain the appeal and remand the record for further

proceedings, to include allowing the respondent the opportunity to apply for any form of relief for which he may be eligible. For the foregoing reasons, the following order will be entered.

ORDER: 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

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
MEMPHIS, TENNESSEE

File: A205-152-331

September 3, 2014

In the Matter of

MARCO DELGADO-LOPEZ

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i), alien present without being admitted or
paroled.

APPLICATIONS:

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: D. ROOK MOORE III

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

Respondent is an unmarried male, native and citizen of Mexico.

Respondent first appeared before the Memphis Immigration Court on June 18, 2013
and the Immigration Judge gave respondent until today, September 3, 2014, to find an
attorney.

Respondent returned to court and did not have an attorney. The
Immigration Judge took a plea on the allegations on the Notice to Appear. The
Immigration Judge then asked respondent questions to determine his eligibility for relief.

Respondent testified that he arrived in the United States in Texas in 2005. He has three United States citizen children but the mother of the children has no legal status in the United States. Respondent is not married to a United States citizen or a lawful permanent resident and his parents have no legal status in the United States.

Respondent testified that he came to the United States because there are no jobs in his hometown in Mexico and that is why he is afraid to return. Of course, this is not a ground for withholding of removal.

Respondent was somewhat evasive in answering questions concerning his criminal history but ultimately it appears that respondent was convicted outside the five-year period required for showing of good moral character for DUI and possibly of fleeing the scene of an accident. Department Counsel has stated no opposition to a grant of post-completion voluntary departure and respondent has testified that he is able to post the requisite bond.

Respondent has stated that he wishes to appeal this decision and so the Immigration Judge will provide the reasons for his non-continuance below.

ANALYSIS

An Immigration Judge may grant a continuance for good cause shown. 8 C.F.R. § 1003.29. The Board of Immigration Appeals will look to whether the Government has opposed the motion, and in this case the Government does, and whether or not the Immigration Judge has given a cogent reason for denying the continuance. Another factor is whether there has been sufficient time.

The Sixth Circuit has repeatedly upheld the ability of Immigration Judges to set time limits for things such as filing of applications and for finding counsel. See Kwak v. Holder, 607 F.3d 1140 (6th Cir. 2010); Ukpabi v. Mukasey, 525 F.3d 403 (6th Cir. 2008); and Ilic-Lee v. Mukasey, 507 F.3d 1044, 1047 (6th Cir. 2007).

In this case, the Immigration Judge gave respondent well over a year to find an attorney. Respondent has come to court pro se. The Court is aware that respondent tried to find an attorney but he said the attorneys were too expensive. This is a factor beyond the control of the Immigration Judge.

Given that respondent has had almost 15 months to find counsel, it is not reasonable for the Court to continue the case further, especially since respondent has not expressed any basis for relief. He only wants to stay in the United States and that is his reason for appealing the decision to the Board of Immigration Appeals.

The Department has no objection to a grant of voluntary departure post-completion and so the Court enters this order:

ORDER

Respondent's request for a continuance is denied;

Respondent is granted voluntary departure up to and including November 3, 2014 or such date as the Board of Immigration Appeals may grant to respondent. Respondent shall post a bond of \$500 with the Department of Homeland Security by September 10, 2014. If respondent does not post this bond, the order of voluntary departure automatically converts to an order of removal against him to Mexico. Respondent is specifically admonished that he is to provide proof to the Board of Immigration Appeals within 30 days of taking any appeal of the posting of this bond. Failure to provide such proof will convert the order of voluntary departure to an order of removal, and the Board will not convert the order of removal back to an order of voluntary departure.

Respondent is admonished that if he does not depart the United States by the date set by this Court, or extended by the Board of Immigration Appeals, the order of voluntary departure automatically converts to an order of removal against him to

Mexico. This will make him ineligible for voluntary departure, adjustment of status, and cancellation of removal for 10 years and subject him to civil penalties, the presumption being that the civil penalty will be in the amount of \$3,000. If respondent files a motion to reopen or to reconsider during the voluntary departure period, the order of voluntary departure automatically terminates and an order of removal takes its place.

Please see the next page for electronic

signature

CHARLES E. PAZAR
Immigration Judge

//s//

Immigration Judge CHARLES E. PAZAR

pazarc on January 7, 2015 at 6:32 PM GMT