



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*

**Jackson, Billy
Law Offices of Billy I. Jackson, P.A.
333 N. Orange Avenue
Suite 201
Orlando, FL 32801**

**DHS/ICE Office of Chief Counsel - ORL
3535 Lawton Road, Suite 100
Orlando, FL 32803**

Name: N [REDACTED], F [REDACTED]

A [REDACTED] -340

Date of this notice: 9/26/2019

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.
Baird, Michael P.
Cole, Patricia A.

Userteam: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

RL

Falls Church, Virginia 22041

File: A-340 – Orlando, FL

Date: **SEP 26 2019**

In re: P-N

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Billy Jackson, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Haiti, appeals from the Immigration Judge's April 19, 2018, decision deeming abandoned the respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), as well as his request for protection under the Convention Against Torture, 8 C.F.R. § 1208.16(c). *See* 8 C.F.R. §§ 1208.13, 1208.16-.18. The appeal will be sustained, and the record will be remanded.

This Board defers to the Immigration Judge's factual findings, including credibility findings, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including issues of law, discretion, and judgment. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge concluded that the respondent's applications for relief were abandoned on account of the respondent's failure to meet the fingerprint and biometrics requirements (IJ at 2-3). *See* 8 C.F.R. §§ 1003.47(a)-(d). The respondent appeals this decision, arguing that he was not properly advised about the biometrics requirements (Respondent's Br. at 4).

To determine whether an alien has abandoned his application for relief based on the failure to comply with the biometrics filing requirement, the record must demonstrate that the alien received proper notice of those requirements. *Matter of D-M-C-P-*, 26 I&N Dec. 644, 648-49 (BIA 2015). Proper notice requires that (1) the DHS advise the alien of the need for biometrics, and instructs him how to provide this information; (2) the Immigration Judge identify the deadline upon which the alien must comply with the biometrics request; and (3) the Immigration Judge inform the alien of the consequences of failing to comply with the biometrics requirement. *See id.*

The Immigration Judge stated that on January 17, 2018, he instructed the respondent to submit the Application for Asylum and for Withholding of Removal (Form I-589) to USCIS to initiate the biometrics process (IJ at 2). The record shows, however, that when the Immigration Judge asked the respondent if the Form I-589 had been sent to USCIS, the DHS attorney responded that she had a copy of the application (Tr. at 25). No further inquiry was made into the matter, and no explanation was given to the respondent as to how he was required to comply with the biometrics requirements.

While the Immigration Judge furnished a copy of general instructions regarding biometrics and filing deadlines, that document alone does not fully comply with the notice requirements of *Matter of D-M-C-P-*. See Ex. 10. Because the respondent did not receive proper notice of the biometrics requirements, we reverse the Immigration Judge's conclusion that the respondent abandoned his applications for relief, and remand the record for the Immigration Judge to apply *Matter of D-M-C-P-*.¹

Contrary to the respondent's contention on appeal, upon our review of the audio recording of the April 19, 2018, hearing, we do not view the Immigration Judge's tone as inappropriate (Respondent's Br. at 4-5). The Immigration Judge stated his recollection of what had occurred during the January 17, 2018, hearing. Although his recollection was erroneous, he conducted the hearing professionally, repeatedly attempted to explain why he deemed the respondent's applications for relief abandoned, and explained how the respondent could appeal the decision to the Board. Under these circumstances, the Immigration Judge conducted the hearing fairly.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.



FOR THE BOARD

¹ We acknowledge that the respondent, through counsel, filed evidence demonstrating he completed biometric processing on May 29, 2018; however, their validity is set to expire soon, and may require renewal on remand (Respondent's Br., Exh. A).