



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



DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324

Name: G [REDACTED]-B [REDACTED] A [REDACTED] M [REDACTED] A [REDACTED]-739
Riders: [REDACTED]

Date of this notice: 6/28/2016

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

Unpublished

Userteam: Docket

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www.irac.net/unpublished/index/

Falls Church, Virginia 22041

Files: A-739 – Dallas, TX
A-

Date: **JUN 28 2016**

In re: A-M-G-B-
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Pro se

APPLICATION: Remand

The respondents, natives and citizens of Guatemala, appeal from the Immigration Judge's April 21, 2016, decision. In that decision, the Immigration Judge found them removable and granted them 120 days pre-hearing voluntary departure. The record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony and the likelihood of future events, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). *See Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The lead respondent withdrew her asylum application, accepted 120 days pre-hearing voluntary departure, and waived appeal (Tr. at 18-19, 22). However, upon review of the record, we conclude that the waiver of appeal was not knowingly and intelligently made. The Department of Homeland Security ("DHS") attorney told the pro se lead respondent that after looking at her asylum application and statement, it appeared that she did not have a valid claim to asylum. The DHS attorney offered the respondents 120 days voluntary departure to avoid a likely removal order (Tr. at 15-16). The Immigration Judge told the lead respondent that he concurred with what the DHS attorney had said. The Immigration Judge told her that she could proceed with the hearing on her asylum application, but that the result would likely be a removal order (Tr. at 16-17).

The Board observed in *Matter of E-F-H-L-*, 26 I&N Dec. 319, 322 (BIA 2014) that in some cases an applicant may establish eligibility for asylum by means of his or her oral testimony when such eligibility would not have been established by the documents alone. We conclude that the lead respondent was unfairly pressured/encouraged to abandon her asylum claim based on a perfunctory review and rejection of the merits of her claims without any further inquiry by the Immigration Judge. We will thus remand the record to the Immigration Judge to allow the respondents to present their claims for asylum, and the lead respondent to present her claims for withholding of removal and protection under the Convention Against Torture. By remanding this case we are not expressing any opinion on the ultimate merits of the respondents' claims for relief and protection from removal.

Accordingly, 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
IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

GARCIA-BAUTISTA, ANA MARIA
GLENDY LOPEZ
7500 ROLLING BROOK DR., #811
FRISCO, TX 75034

IN THE MATTER OF

FILE A [REDACTED] 739

DATE: Apr 21, 2016

G [REDACTED] B [REDACTED], A [REDACTED] M [REDACTED]

UNABLE TO FORWARD - NO ADDRESS PROVIDED

ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

X OTHER: Order for Volunteer Departure

SW
COURT CLERK
IMMIGRATION COURT

CC: ~~DESGY~~ PRICE
125 E. HWY 114, STE 500
IRVING, TX, 75062

FF

UNITED STATES IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

IN THE REMOVAL CASE OF

G [REDACTED] E [REDACTED], A [REDACTED] M [REDACTED]
RESPONDENT

CASE NO.: A [REDACTED]-739

ORDERS

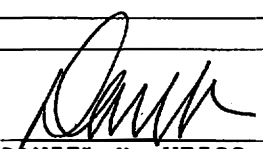
- ☒ This is a memorandum of the Court's Decision and Orders entered on April 15, 2016. This memorandum is solely for the convenience of the parties. The oral or written Findings, Decision and Orders is the official opinion in this case. () Both parties waived issuance of a formal oral decision in the case.
- [] The respondent was ordered REMOVED from the United States to () in absentia.
- [] Respondent's application for VOLUNTARY DEPARTURE was DENIED and respondent was ordered removed to _____, in the alternative to _____.
- ☒ Respondent's application for VOLUNTARY DEPARTURE was GRANTED until August 15, 2016, upon posting a voluntary departure bond in the amount of \$ 0 to DHS within five business days from the date of this Order, with an alternate Order of removal to Guatemala or _____. Respondent shall present to DHS within () thirty days ☒ sixty days from the date of this Order, all necessary travel documents for voluntary departure.
- ☒ Respondent's application for ASYLUM was () granted () denied ☒ withdrawn with prejudice.
☒ subject to the ANNUAL CAP under the INA section 207(a)(5).
() Respondent knowingly filed a FRIVOLOUS asylum application.
- [] Respondent's application for WITHHOLDING of removal under INA section 241(b)(3) was () granted () denied () withdrawn with prejudice.
- [] Respondent's application for WITHHOLDING of removal under the Torture Convention was () granted () denied () withdrawn with prejudice.
- [] Respondent's application for DEFERRAL of removal under the Torture Convention was () granted () denied () withdrawn with prejudice.
- [] Respondent's application for CANCELLATION of removal under section () 203(b) of NACARA, () 240A(a) () 240A(b)(1) () 240A(b)(2) of the INA, was () granted () denied () withdrawn with prejudice. If granted, it was ordered that the DHS issue all appropriate documents necessary to give effect to this Order. Respondent () is () is not subject to the ANNUAL CAP under INA section 240A(e).
- [] Respondent's application for a WAIVER under the INA section _____ was () granted () denied () withdrawn or () other _____. () The conditions imposed by INA section 216 on the respondent's permanent resident status were removed.
- [] Respondent's application for ADJUSTMENT of status under section _____ of the () INA () NACARA () _____ was () granted () denied () withdrawn with prejudice. If granted, it was ordered that DHS issue all appropriate documents necessary to give effect to this Order.

CASE NUMBER: [REDACTED]-739

RESPONDENT: G [REDACTED]-B [REDACTED] A [REDACTED] M [REDACTED]

- [] Respondent's status was RESCINDED pursuant to the INA section 246.
- [] Respondent's motion to WITHDRAW his application for admission was
() granted () denied. If the respondent fails to abide by any of
the conditions directed by the district director of DHS, then the
alternate Order of removal shall become immediately effective without
further notice or proceedings: the respondent shall be removed from
the United States to _____.
- [] Respondent was ADMITTED as a _____ until
_____. As a condition of admission, the respondent was
ordered to post a \$ _____ bond.
- [] Case was () TERMINATED () with () without prejudice
() ADMINISTRATIVELY CLOSED.
- [] Respondent was orally advised of the LIMITATION on discretionary
relief and consequences for failure to depart as ordered.
[] If you fail to voluntarily depart when and as required, you shall
be subject to civil money penalty of at least \$1,000, but not more than
\$5,000, and be ineligible for a period of 10 years for any further
relief under INA sections 240A, 240B, 245, and 248 (INA Section 240B(d)).
[] If you are under a final order of removal, and if you willfully fail
or refuse to 1) depart when and as required, 2) make timely application
in good faith for any documents necessary for departure, or 3) present
yourself for removal at the time and place required, or, if you conspire
to or take any action designed to prevent or hamper your departure, you
shall be subject to civil money penalty of up to \$500 for each day under
such violation. (INA section 274D(a)). If you are removable pursuant
to INA 237(a), then you shall further be fined and/or imprisoned for up
to 10 years. (INA section 243(a)(1)).
- [] Other:

Date: Apr 15, 2016


DANIEL H. WEISS, Judge

APPEAL: (X) waived () reserved by () Respondent () DHS (X) Both

DUE BY:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: [] MAIL [] PERSONAL SERVICE
TO: [] DHS [] ALIEN [] Alien's ATT/REP [] ALIEN c/o Custodial Officer
DATE: _____ BY: [] COURT STAFF [] JUDGE _____