



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: LAISENI, PEKEPEKA

A 205-272-741

Date of this notice: 2/27/2015

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:
Cole, Patricia A.

USCIS
User team: Docket

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Falls Church, Virginia 20530

File: A205 272 741 – Seattle, WA

Date: FEB 27 2015

In re: PEKEPEKA LAISENI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Steve Tanijo, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (sustained)

APPLICATION: Continuance; remand; voluntary departure

The respondent, a native and citizen of Tonga, appeals from the decision of the Immigration Judge, dated June 25, 2013, denying his motion for a continuance, finding him removable as charged, and granting him voluntary departure under section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b).¹ During the pendency of the appeal, the respondent has also filed a motion to remand supported by new evidence.² The Department of Homeland Security (DHS) has not filed a response. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent challenges only the Immigration Judge's denial of a continuance. The record reflects that at the initial master calendar hearing held in these proceedings the respondent requested a continuance to allow sufficient time for his spouse to pursue a request for nonimmigrant status under the provisions of section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), before United States Citizenship and Immigration Services ("USCIS"), which if approved, may provide him U-2 nonimmigrant status as derivative. *See* 8 C.F.R. § 214.14(f). The DHS opposed the motion. The Immigration Judge denied the motion based upon uncertainty regarding whether the law enforcement certification would be completed (I.J. at 2). *See* 8 C.F.R. § 214.14(c)(2)(i).

¹ In order to resolve any issues regarding the timeliness of the appeal in this case, we will take the case on certification. *See* 8 C.F.R. § 1003.1(c).

² The respondent made this request in his brief (Respondent's Br. at 12-13).

During the pendency of the appeal, the respondent has proffered evidence that his spouse has filed with USCIS a Form I-918, (Petition for U Nonimmigrant Status) on her own behalf, a Form I-918, Supplement A (Petition for Qualifying Family Member of U-1 Recipient) on the respondent's behalf, and a Form I-918, Supplement B (U Nonimmigrant Status Certification). Additionally, the respondent provided evidence that establishes he and his spouse have each filed a Form I-192 (Application for Advance Permission to Enter as a Nonimmigrant). Finally, the respondent filed evidence supporting these applications, including his marriage certificate indicating he is a qualifying relative for purposes of the U visa application and a police report relating to the qualifying criminal activity. *See* 8 C.F.R. §§ 214.14(a)(9), (10).

Based on the new evidence proffered on appeal we conclude that it is appropriate to remand the record of these removal proceedings to the Immigration Judge in order to provide the respondent with a reasonable opportunity to obtain a decision from USCIS regarding the pending applications for benefits under section 101(a)(15)(U)(i) of the Act. *See Matter of Coehlo*, 20 I&N Dec. 464, 471 (BIA 1992) (stating that a motion to remand is treated similarly to a motion to reopen, and therefore, requires both a showing of prima facie eligibility for relief and the proffer of material evidence that was "unavailable and could not have been discovered or presented at the former hearing"); *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 815 (BIA 2012) (stating "[a]s a general rule, there is a rebuttable presumption that an alien who has filed a prima facie approvable application with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time."); *see also Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009); *see also* 8 C.F.R. §§ 1003.29, 1240.6.

While we conclude that remand is warranted, we express no opinion regarding the ultimate outcome of these removal proceedings at the present time. Accordingly, the following order will be entered.

ORDER: The record is remanded 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
SEATTLE, WASHINGTON

File: A205-272-741

June 25, 2013

In the Matter of

PEKEPEDA LAISENI

RESPONDENT

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)
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IN REMOVAL PROCEEDINGS

CHARGES: Overstay.

APPLICATIONS: Continuance - voluntary departure.

ON BEHALF OF RESPONDENT: STEVEN TANIJO, ATTORNEY AT LAW

ON BEHALF OF DHS: ANNE P. MCELEARNEY, ATTORNEY AT LAW

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 32-year-old married man who is a native and citizen of C~~I~~onga. He was placed in proceedings by the filing of his Notice to Appear on March 30, 2012. This has been designated as Exhibit 1. The respondent has admitted the allegations and conceded removability.

The respondent has affirmatively stated that there is no request for asylum or related relief and he has designated C~~I~~onga.

The Department has offered, as Exhibit 2, the record of deportable alien.

The respondent, by way of relief, has requested that the case be continued

because he states that he is married to a woman who has been the subject of violence and she wants to do a I-918, which if it would be granted would allow the respondent to get benefits as a derivative.

The Department has opposed the request to continue on several bases. Included is the fact that unfortunately this respondent was convicted of domestic violence against her in March of 2012. Additionally, this case has certainly been on the docket for well over a year and it is not at all clear just when the certification for the I-918 will, in fact, be provided.

I take note that under Department guidance, no one can be removed if there is a pending I-918 and under the circumstances as set forth above, I sustain the Department's opposition for the request to continue.

ORDER

IT IS HEREBY ORDERED that the motion to continue be denied.

IT IS FURTHER ORDERED that the respondent be given the privilege of voluntary departure by August 26, 2013, upon the posting of a \$500 voluntary departure bond, with an alternate order of removal to Conga.

IT IS FURTHER ORDERED that the voluntary departure advisals are provided herewith and incorporated herein by reference.

June 25, 2013

Please see the next page for electronic

signature

KENNETH JOSEPHSON
Immigration Judge

//s//

Immigration Judge KENNETH JOSEPHSON

josephsk on November 29, 2013 at 6:15 PM GMT