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

Jaquez, Luis Alberto
Jaquez Law Office
400 Continental Blvd., 6th floor
El Segundo, CA 90245

DHS/ICE
606 S. Olive Street, 8th Floor
LOS ANGELES, CA 90014

Name: GARCIA-CASTILLO, MARTHA P... **A 092-395-313**

Date of this notice: 9/17/2015

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:
Holmes, David B.

Userteam: Docket

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

GARCIA-CASTILLO, MARTHA PATRICIA
0/A092-395-313
CUSTODIAL OFFICER
P.O. BOX 22003
SANTA ANA, CA 92702

DHS/ICE
606 S. Olive Street, 8th Floor
LOS ANGELES, CA 90014

Name: GARCIA-CASTILLO, MARTHA P... **A 092-395-313**

Date of this notice: 9/17/2015

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Holmes, David B.

Userteam:

File: A092 395 313 – Los Angeles, CA Date: SEP 17 2015

In re: MARTHA PATRICIA GARCIA-CASTILLO a.k.a. Martha Patricia Garcia

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Luis A. Jaquez, Esquire

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's decision dated June 26, 2015. The Department of Homeland Security (DHS) has not filed a response in opposition to the respondent's appeal. We review questions of law, discretion, and judgment arising in appeals from decisions of Immigration Judges de novo, whereas we review findings of fact in such appeals under a clearly erroneous standard. *See* 8 C.F.R. § 1003.1(d)(3). The record will be remanded to the Immigration Court.

Applying a de novo standard of review, we affirm the Immigration Judge's conclusion, for the reasons outlined in the Oral Decision, that the respondent did not establish good cause for a continuance (I.J.at 4-5). *See Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012). However, on appeal, the respondent has now submitted evidence that her U visa application has been filed with the appropriate certification. The DHS has not opposed the respondent's request for a remand, and we find it appropriate to remand the record for further proceedings regarding the respondent's pursuit of her application for relief. *Id.*

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File: A092-395-313 June 26, 2015

In the Matter of

MARTHA PATRICIA GARCIA-CASTILLO	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, as amended: at any time after admission you've been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act, a crime of violence for which a term of imprisonment ordered is at least one year.

APPLICATIONS: Voluntary departure.

ON BEHALF OF RESPONDENT: LUIS A. JAQUEZ, Esquire
Jaquez Law Office
400 Continental Boulevard, Sixth Floor
El Segundo, CA 900245

ON BEHALF OF DHS: JAILUK PARRINO, Senior Attorney
Department of Homeland Security
606 South Olive Street, Eighth Floor
Los Angeles, California 90014

DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent is a female native and citizen of Mexico. The Department of Homeland Security (DHS) commenced these removal proceedings against the respondent pursuant to its authority under Section 240 of the Immigration and Nationality Act (INA). DHS commenced these proceedings by filing the Notice to

Appear (NTA) with the Immigration Court on February 26, 2015. See Exhibit 1. In the NTA, DHS charged the respondent with removability pursuant to INA Section 237(a)(2)(A)(iii) as an individual who at any time after admission has been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act, a crime of violence for which a term of imprisonment ordered is at least one year.

PLEADINGS

The respondent entered pleadings to the NTA. The respondent conceded proper service of the NTA. The respondent admitted factual allegations 1, 2 and 3. The respondent denied factual allegations 4 and 5.

FINDINGS ON FACTUAL ALLEGATIONS

The respondent admitted factual allegations 1, 2 and 3. Based upon the respondent's admissions, the Court does find that allegations 1, 2 and 3, are true by evidence that is clear and convincing. The respondent has denied factual allegations 4 and 5, and denied the charge as well. In support of allegations 4 and 5, the Department did submit records related to those allegations. See Exhibit 2. Exhibit 2 includes the Abstract of Judgment, as well as the felony complaint from the Superior Court of California. Exhibit 2 does reflect that the respondent was convicted of a violation of California Penal Code Section 273.5(a) and sentenced to two years for that offense. See Exhibit 2. Exhibit 2 does reflect that the date of conviction was March 25, 2014. As that is the date in the section of law indicated in allegation 4, the Court does find factual allegation 4 has been proven to be true by clear and convincing evidence. Factual allegation 5 states "you were sentenced to a term of imprisonment of two years for this offense." See Exhibit 1. Exhibit 2 does reflect that for the offense of violating Penal Code 273.5(a) the respondent was sentenced to two years. Based upon the documents in Exhibit 2, the Court does find that factual allegation number 5 has been proven to be

true by clear and convincing evidence.

ANALYSIS ON REMOVAL CHARGE

The Department must prove by clear and convincing evidence that the respondent is subject to removal. The Department has charged the respondent with being subject to removal as an alien who at any time after admission has been convicted of an aggravated felony as defined in 101(a)(43)(F). A violation of Penal Code Section 273.5 is categorically a crime of violence. See Banuelos-Ayon v. Holder, 611 F.3d 1080 (9th Cir. 2010). The Department thus has demonstrated that the respondent was convicted of a crime of violence for the aggravated felony under 101(a)(43)(F). DHS has also established that the respondent was sentenced to a term of imprisonment as the respondent was sentenced to two years for that offense. Additionally, the respondent was adjusted to an LPR on February 28, 1990, and the conviction was entered on March 25, 2014. Thus, the Department has established that the respondent is an alien, based upon her admissions to factual allegations 1 and 2, that she was convicted after her admission of a crime of violence and sentenced to a term of imprisonment of at least one year.

Therefore, the Court does find that the Department has established the respondent is subject to removal under INA Section 237(a)(2)(A)(iii) by clear and convincing evidence. Therefore, the Court sustains the charge.

APPLICATIONS FOR RELIEF

The respondent applied for voluntary departure. The respondent also requested a continuance in order to pursue a U visa.

ANALYSIS

The respondent bears the burden of proof and persuasion on her applications. 8 C.F.R. Section 1240.8(d). The respondent has applied for voluntary departure. The

Court finds that the respondent is ineligible for voluntary departure as a matter of law. In order to be eligible for pre-conclusion voluntary departure, the respondent must demonstrate that she is not deportability under Section 237(a)(2)(A)(iii) or 237(a)(4)(B). The Court has found her to be subject to removal under Section 237(a)(2)(A)(iii). Therefore, the respondent cannot demonstrate eligibility for pre-conclusion voluntary departure.

The respondent also has failed to demonstrate eligibility for voluntary departure at the conclusion of proceedings. Pursuant to INA Section 240B(b)(1)(C) an alien must demonstrate that she is not deportable under Section 237(a)(2)(A)(iii) in order to eligibility for voluntary departure at the conclusion of proceedings. As the Court has found her subject to removal under Section 237(a)(2)(A)(iii), she is ineligible for voluntary departure at the conclusion of proceedings.

The respondent has also requested a continuance in order to pursue a U visa. In determining whether good cause exists to continue removal proceedings to await the adjudication of a pending U nonimmigrant visa petition, an Immigration Judge can consider: (1) the response of the Department of Homeland Security to the alien's motion to continue; (2) whether the underlying visa petition is *prima facie* approvable; and (3) the reason for the continuance and other procedural factors. See Matter of Sanchez-Sosa, 25 I&N Dec. 807 (BIA 2012).

In this case, the respondent seeks a continuance in order to pursue a U visa. Unlike Sanchez-Sosa there is not a pending U nonimmigrant visa petition that is awaiting adjudication. The respondent has not submitted the U visa petition, or provided evidence that it has been filed. Additionally, the Department does oppose any lengthy continuance. However, the Court has continued the matter on several occasions for preparation and filing of other possible applications, and the petition has

yet to be filed. As there is no underlying visa petition to review, the Court cannot assess the *prima facie* approvability. Additionally, the respondent is detained and has an aggravated felony conviction. Congress has expressed an interest in ensuring that cases involving criminal aliens are adjudicated in a timely manner.

The respondent also procedurally is still able to pursue her U visa. The U visa is not an application the Court can adjudicate. Thus, it has no control of the timing of the adjudication, and again the respondent is able to pursue that form of relief collaterally with USCIS even while her proceedings are pending, whether in the U.S. or abroad. Thus, in assessing all of the factors under Matter of Sanchez-Sosa, the Court does not find that the respondent has demonstrated good cause for a continuance, and again, the Court notes that unlike Sanchez-Sosa where there was a pending visa petition, the petition in this matter has not yet been filed. Therefore, the Court denies the request for a continuance.

Accordingly, the Court will enter the following orders:

ORDERS

IT IS HEREBY ORDERED that the respondent's for voluntary departure is denied.

IT IS FURTHER ORDERED that the respondent's request for a continuance is denied.

IT IS FURTHER ORDERED that the respondent be removed to Mexico on the charge contained in the Notice to Appear.

Please see the next page for electronic signature

KEVIN W. RILEY
Immigration Judge

//s//

Immigration Judge KEVIN W. RILEY

rileyk on August 7, 2015 at 6:13 PM GMT