U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: S[redacted], L[redacted]

A[redacted]-284

Date of this notice: 4/5/2019

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:
Wendtland, Linda S.
O'Connor, Blair
Cole, Patricia A.

Userteam: Docket

File: [redacted]-284 – Batavia, NY

Date: APR - 5 2019

In re: L[redacted] S[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Dalbir Singh, Esquire

ON BEHALF OF DHS: Peter J. Marché
Assistant Chief Counsel

APPLICATION: Remand

In a decision dated October 17, 2018, an Immigration Judge ordered the respondent removed from the United States. The respondent, a native and citizen of India, has appealed from this decision. The record will be remanded for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i) (2018). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

At a master calendar hearing conducted on September 27, 2018, the respondent expressed a fear of returning to India (IJ at 1-2; Tr. at 8-10). The Immigration Judge provided the respondent with an Application for Asylum and Withholding of Removal (Form I-589) and set the deadline for filing this application for October 9, 2018 (IJ at 1-2; Tr. at 10-12). The respondent stated that he understood that his application had to be filed by this deadline (IJ at 1-2; Tr. at 10-12).[1] The respondent filed his Form I-589 on October 9, 2018 and filed his supporting documents on October 16, 2018 (IJ at 1-2).

The Immigration Judge acknowledged that the respondent had "technically" filed his Form I-589 before the deadline (IJ at 1-2; Tr. at 20). However, he deemed waived the respondent's right to file this application because it did not contain any substantive information regarding his fear of being returned to India (IJ at 1-2; Tr. at 18-21). Specifically, the respondent filled all of the sections regarding his fear of mistreatment in India with the phrase "I will submit detailed statement at the time of my Hearing [sic]" (IJ at 1-2; Tr. at 18-21; Form I-589 at 5-6).

Immigration Judges "may set and extend time limits for the filing of applications and related documents." 8 C.F.R. § 1003.31(c). "If an application or document is not filed within the time

[1] We agree with the respondent that the Immigration Judge did not make clear that this deadline was also for any documents he wished to submit in support of his application (*see* Tr. at 10-12; Respondent's Br. at 5).

set by the Immigration Judge, the opportunity to file that application or document shall be deemed waived." *Id.* Because the respondent's Form I-589 was filed by the October 9, 2018, deadline, the Immigration Judge should not have deemed his right to file this application waived (Respondent's Br. at 4-6). Once the application was timely filed, the Immigration Judge should have conducted an "evidentiary hearing," by examining the respondent "under oath on his . . . application" and placing the burden on him to establish his eligibility for asylum and withholding of removal, and then decided whether the respondent had met his burden based on the application and testimony presented. 8 C.F.R. § 1240.11(c)(3).

We will therefore remand the record to the Immigration Court to conduct an evidentiary hearing and assess the respondent's eligibility for asylum, withholding of removal, and Convention Against Torture protection based on the Form I-589 and any testimony and evidence the respondent wishes to present.[2] 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.

Linda J. Wendtland

FOR THE BOARD

[2] Because we are remanding the record for further proceedings, we need not address at this time the respondent's argument that the Immigration Judge did not provide him with a full and fair hearing in this case (Respondent's Br. at 7-8). The respondent's argument that the Immigration Judge exhibited bias during proceedings is also not borne out by the record (Respondent's Br. at 8). Thus, we will not grant the respondent's motion to remand the record to a different Immigration Judge (Respondent's Br. at 8). Finally, the respondent's arguments in favor of termination in light of *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), are foreclosed by our precedential decision in *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018) (Respondent's Br. at 9-10).