



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: KHARBACH, MOHAMMED

A 095-427-618

Date of this notice: 11/24/2014

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

Userteam: Docket

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DM

Falls Church, Virginia 20530

File: A095 427 618 – Denver, CO

Date:

NOV 24 2014

In re: MOHAMMED KHARBACH

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Bernadette McGuire, Esquire

ON BEHALF OF DHS: Geoffrey D. Rieman
Assistant Chief Counsel

APPLICATION: Voluntary departure; continuance

The respondent, a native and citizen of Morocco, appeals from the September 21, 2012, decision of an Immigration Judge, finding him removable as charged, and denying his motion for a continuance. The record will be remanded.

The decision below is inadequate for appellate review. *See Matter of M-A-M* 25 I&N Dec. 474, 483 (BIA 2011) (an Immigration Judge must articulate the reasoning behind his or her decision). At the outset, we acknowledge the respondent's appellate contention that the Immigration Judge incorrectly found that he had conceded removability when, in fact, he had only admitted to the allegations contained in the Notice to Appear ("NTA"). *Compare* I.J. Dec. at 2 *with* Tr. at 13. The Immigration Judge's decision, finding the respondent removable is inadequate in its analysis, therefore. Section 240(c)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §1229a(c)(3)(A) (the government has the burden of establishing by clear and convincing evidence that an alien is deportable).

With regard to the respondent's motion for a continuance, the Immigration Judge's decision is likewise inadequate. The Immigration Judge neither analyzed the merits of the respondent's motion for a continuance nor whether the respondent had shown good cause for a continuance. *See Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987) (the decision to grant or deny a continuance is a matter of discretion where good cause is shown). None of the factors bearing on an exercise of discretion were discussed, as well. Rather, the Immigration Judge simply found that proceedings had been continued for "at least 20 times" and the respondent was not ready to proceed, presumably, with an application for adjustment of status (I.J. Dec. at 2). The transcript additionally reflects his concern during proceedings with internal case completion goals (Tr. at 37, 39-40, 42-43). *See Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (noting that case

completion goals are not an appropriate factor to consider in weighing a request for a continuance).

Under the circumstances presented in this case, the record will be remanded for further proceedings and the entry of a new decision on the respondent's removability and motion for a continuance. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may not engage in fact finding in the course of deciding appeals except for taking administrative notice of commonly known facts). Upon remand, the parties may update the record with respect to the status of the pending I-130 (Petition for Alien Relative) which was filed on behalf of the respondent.

ORDER: The decision of the Immigration Judge is vacated.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DENVER, COLORADO

File: A095-427-618

September 21, 2012

In the Matter of

MOHAMMED KHARBACH)	
)	IN REMOVAL PROCEEDINGS
)	
RESPONDENT)	

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: LISA YORK

ON BEHALF OF DHS: GEOFF REIMAN

ORAL DECISION OF THE IMMIGRATION JUDGE

The Court would indicate that the respondent in this matter received the Notice to Appear in removal proceedings on January 9, 2003. At that time, Homeland Security indicated that the respondent was removable pursuant to 237(a)(1)(B) of the Immigration and Nationality Act, as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act that he remained in the United States for a time longer than

that which is permitted, in violation of this Act or any other law of the United States.

At a prior Master Calendar hearing, the respondent admitted the allegations and conceded removability from the United States. Removability has been shown by clear, convincing, and unequivocal evidence.

The Court would indicate that the respondent was first before the Court on April 2, 2003. This matter has been continued at least 20 times.

The respondent's application for adjustment of status has been denied. He is not ready to proceed at this particular time. So the Court has no alternative at this time but to order that he be removed from the United States.

The Court would indicate that Ms. York was offered voluntary departure for a period of 60 days with a \$500 bond. She indicated that they do not wish to take advantage of that.

So the Court will order that the respondent make himself available to Immigration authorities when they call him for purposes of taking him back to Morocco.

DAVID J. CORDOVA
Immigration Judge

CERTIFICATE PAGE

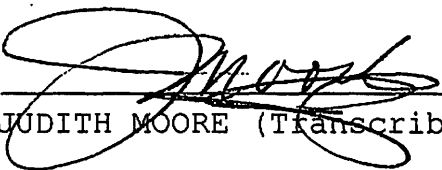
I hereby certify that the attached proceeding before JUDGE
DAVID J. CORDOVA, in the matter of:

MOHAMMED KHARBACH

A095-427-618

DENVER, COLORADO

is an accurate, verbatim transcript of the recording as provided
by the Executive Office for Immigration Review and that this is
the original transcript thereof for the file of the Executive
Office for Immigration Review.


JUDITH MOORE (Transcriber)

FREE STATE REPORTING, Inc.

NOVEMBER 17, 2012

(Completion Date)