

**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*

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHS/ICE - Office of Chief Counsel  
10400 Rancho Road  
Adelanto, CA 92301**

**Name: M [REDACTED], E [REDACTED] R [REDACTED]**

**A [REDACTED]-987**

**Date of this notice: 6/19/2018**

Enclosed is a copy of the Board's decision in the above-referenced case. 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 this decision.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Greer, Anne J.

Userteam: Docket

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[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

Falls Church, Virginia 22041

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File: [REDACTED] 987 – Adelanto, CA

Date: JUN 19 2018

In re: E [REDACTED] R [REDACTED] M [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Cancellation of removal; remand

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's decision dated November 13, 2017, deeming abandoned the respondent's application for cancellation of removal for certain lawful permanent residents and ordering him removed. *See* section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). 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).

During his proceedings below, the respondent was represented by attorney Salvador Ortiz, who prepared an application for cancellation of removal on the respondent's behalf (Exh. 6). At a hearing on December 17, 2015, Mr. Ortiz sent attorney Christine Mercho on his behalf to represent the respondent (Tr. at 54-55; Exh. 6). Ms. Mercho filed a copy of the respondent's application for cancellation of removal with the Immigration Judge (Tr. at 54-55; Exh. 6). The Immigration Judge told Ms. Mercho that the respondent would be required to present proof that he paid the filing fee for this application by April 11, 2016 (Tr. at 58-59).

At the respondent's continued merits hearing on October 24, 2017, Mr. Ortiz sent attorney Celeste Del Rio on his behalf to represent the respondent (IJ at 2; Tr. at 78). Ms. Del Rio attempted to file documents in support of the respondent's application for cancellation of removal after the filing deadline had passed, with no persuasive explanation for the untimely filing given that the documents were from 2015 (IJ at 2; Tr. at 79-82). When the Immigration Judge requested proof that the respondent had paid the filing fee for his application, Ms. Del Rio stated that she did not have this evidence because the respondent had filed the application while unrepresented (IJ at 3; Tr. at 83). When it was noted that Mr. Ortiz was listed on the application as the person who prepared the application, Ms. Del Rio was unable to provide any information regarding the status of the fee payment or any fee waiver request (IJ at 3; Tr. at 83-84). The Immigration Judge continued proceedings to allow the respondent another opportunity to provide evidence of payment of the filing fee (IJ at 3; Tr. at 88-89).

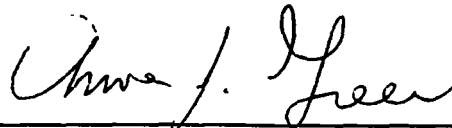
On November 13, 2017, Mr. Ortiz appeared and was unable to provide proof of payment of the fee for the respondent's application for relief despite being put on notice of this issue at prior hearings and despite the fact that the application had been presented to the immigration court in

2015 (IJ at 3; Tr. at 94-97). The Immigration Judge deemed the application abandoned and ordered the respondent removed to Guatemala (IJ at 4). The Immigration Judge noted that the respondent could provide proof that the fee had been paid in a motion to reopen (Tr. at 98).

On November 20, 2017, this Board suspended Mr. Ortiz from practicing before the Board, the Immigration Courts, and the Department of Homeland Security (DHS). On January 25, 2018, the Board ordered Mr. Ortiz disbarred from practice before these same entities. The respondent timely appealed the Immigration Judge's decision.<sup>1</sup>

Given the particular circumstances in this case, including Mr. Ortiz's failure to comply with the filing deadlines set by the Immigration Judge and his subsequent disbarment, as well as the fact that the respondent has provided proof on appeal that he has now paid the filing fees associated with his application, we conclude that remand is warranted to allow the respondent another opportunity to present his application for cancellation of removal as well as any other relief for which he may be eligible. On remand, the parties will have the opportunity to supplement the record. 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

<sup>1</sup> We note that while the respondent is pro se before this Board, his prior attorney, Mr. Ortiz, filed a request for a briefing extension on the respondent's behalf that was denied on April 2, 2018, given that Mr. Ortiz had not filed a Notice of Entry of Appearance (Form EOIR-27) in this matter.