



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: P [REDACTED]-G [REDACTED], J [REDACTED] Y [REDACTED] A [REDACTED]-883

Date of this notice: 6/11/2020

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:
Mullane, Hugh G.
Mann, Ana
Grant, Edward R.

User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-883 – Houston, TX

Date: JUN 11 2020

In re: J [REDACTED] Y [REDACTED] P [REDACTED]-G [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Nataly E. Cabrera, Esquire

ON BEHALF OF DHS: Shannon Simmons
Assistant Chief Counsel

APPLICATION: Remand

The respondent, a native and citizen of El Salvador, has appealed from an Immigration Judge's December 20, 2018, decision deeming his asylum application abandoned due to his failure to obtain biometrics and ordering him removed. The respondent's appeal will be sustained, and the record will be remanded to the Immigration Judge for further proceedings consistent with this order.

We review the Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion and judgment, and all other issues in appeals, *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii); *see also Alvarado de Rodriguez v. Holder*, 585 F.3d 227, 234-35 (5th Cir. 2009) (discussing Board's review of factual findings).

On appeal, the respondent argues that the Immigration Judge erred in deeming his application for asylum, withholding of removal, and protection under the Convention Against Torture to be abandoned. He maintains that the Immigration Judge did not give him a deadline for compliance with the biometric requirements and therefore did not issue proper notice in compliance with *Matter of D-M-C-P-*, 26 I&N Dec. 644 (BIA 2015), and 8 C.F.R. § 1003.47(c).

The respondent further contends that he established good cause for not having complied with the biometrics requirements before his December 20, 2018, hearing. He notes that he does not read or write but he nevertheless acted diligently in obtaining assistance to complete his asylum application, in filing the application in a timely manner, and in retaining an attorney to assist him during his merits hearing. He also points out that he reasonably believed that his attorney was going to assist him with the biometrics requirement, but his attorney did not arrange for a biometrics appointment before the hearing. The respondent's biometrics appointment was scheduled for December 27, 2018, and his attorney quit the day before the respondent's final hearing.

In *Matter of D-M-C-P-*, we held that, "to ensure that an asylum applicant receives proper notice of the biometrics requirements, the Immigration Judge should do all of the following on the record: (1) ensure that the DHS has advised the applicant of the need to provide biometrics and other biographical information and has furnished the appropriate instructions; (2) inform the applicant

of the deadline for complying with the requirements of which he has been notified; and (3) inform the applicant of the consequences of noncompliance, including the possibility that the application will be deemed abandoned and dismissed, unless the failure to comply resulted from good cause.” *Matter of D-M-C-P-*, 26 I&N Dec. at 648–49. In this case, the Immigration Judge did not inform the respondent of a deadline for complying with the biometrics requirement (Tr. at 12). The Immigration Judge therefore did not provide sufficient notice of the biometrics requirement and erred in deeming the respondent’s application for asylum, withholding of removal, and protection under the Convention Against Torture abandoned. Accordingly, we reverse the Immigration Judge’s decision, and we remand the record to the Immigration Judge for further proceedings regarding the respondent’s eligibility for relief from removal.

ORDER: The respondent’s appeal is sustained, and the record is remanded to the Immigration Judge for further proceedings consistent with this order.



FOR THE BOARD