



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: GOMEZ FUENTES, ISMAEL

A 209-883-476

Date of this notice: 8/26/2020

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:
Kelly, Edward F.

Signature
User team: Docket

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Falls Church, Virginia 22041

File: A209-883-476 – Charlotte, NC

Date:

AUG 26 2020

In re: Ismael GOMEZ FUENTES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Amanda B. Keaveny, Esquire

APPLICATION: Continuance; administrative closure

The respondent, a native and citizen of Mexico, appeals the July 19, 2018, decision of the Immigration Judge denying a continuance to wait on the adjudication of a non-immigrant U visa by the United States Citizenship and Immigration Services (USCIS).¹

At the hearing, the respondent requested administrative closure (Tr. at 21). The Department of Homeland Security argued against administrative closure (Tr. at 22). Ultimately, the Immigration Judge denied the respondent's motion to continue but did not specifically rule on the request for administrative closure. The respondent on appeal cites *Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019), a decision from the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case arises (Respondent's Br. at 2). That decision abrogated the Attorney General's decision in *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), and held that "the plain language of 8 C.F.R. §§ 1003.10(b) and 1003.1(d)(1)(ii) unambiguously confers upon [Immigration Judges] and the [Board] the general authority to administratively close cases." *Romero v. Barr*, 937 F.3d at 292.

Accordingly, we will remand the case to the Immigration Judge, in light of *Romero v. Barr*, so that the Immigration Judge may evaluate whether administrative closure is warranted in the first instance and make such other determinations as may be appropriate. See *Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) (noting that "[t]he Board is an appellate body whose function is to review, not create, a record"); 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding authority and stating the Board may remand the proceeding to the Immigration Judge where further fact-finding is needed).

We express no opinion regarding the ultimate outcome of these removal proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

The following order shall be entered.

¹ The Immigration Judge also denied the respondent's motion to terminate based on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). However, the respondent did not argue this issue in the brief on appeal and we consider it waived.

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



FOR THE BOARD