



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: M [REDACTED], R [REDACTED] A [REDACTED]-408

Date of this notice: 10/17/2019

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.
Cole, Patricia A.
Rosen, Scott

Userteam: Docket

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PK

Falls Church, Virginia 22041

File: A [REDACTED]-408 – Boston, MA

Date:

OCT 17 2019

In re: R [REDACTED] M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Elena Nouredine, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture; Remand

The respondent, a native and citizen of Sri Lanka, appeals from the Immigration Judge's April 22, 2019, decision deeming his application for relief abandoned and ordering his removal to Sri Lanka. The appeal will be sustained and the record remanded for further proceedings.

We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, are reviewed *de novo*. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The record shows that on January 16, 2019, the respondent, who is detained, appeared before the Immigration Judge pro se for his first master calendar hearing (Tr. at 2-3). The Immigration Judge advised the respondent about his right to counsel and proceedings were adjourned to allow the respondent the opportunity to retain counsel (Tr. at 2-3). The record indicates that the respondent appeared with counsel at his bond hearing and second master calendar (Tr. at 4). During the second master calendar hearing, the respondent's attorney, who was not identified on the record, confirmed before the Immigration Judge that he was going to represent the respondent "for all proceedings" (Tr. at 4). On February 20, 2019, the respondent's counsel appeared telephonically (Tr. at 8). The record indicates that the Immigration Judge had dismissed the Tamil interpreter scheduled for the February 20, 2019, master calendar hearing prior to the respondent's counsel's arrival (Tr. at 8). The respondent's attorney advised the Immigration Judge that he was preparing an asylum application on the respondent's behalf and was seeking a continuance for completion of the application (Tr. at 7-10). The Immigration Judge provided the respondent with a call up date of April 10, 2019, for the submission of the asylum application and scheduled the merits hearing for April 24, 2019 (Tr. at 10-11). The respondent's counsel assured the Immigration Judge that he would explain the proceedings to the respondent and his obligations for removal proceedings (Tr. at 11).

The respondent's attorney failed to file an asylum application by the deadline set by the Immigration Judge. Instead, the respondent's attorney filed a "motion for one month continuance" on the day of the deadline claiming that he encountered "difficulties in communicating with the

respondent.”¹ The record shows that on April 22, 2019, the Immigration Judge denied the motion to continue as no good cause was shown for the respondent’s failure to file his applications for relief. Further, in an order dated April 22, 2019, the Immigration Judge deemed the respondent’s applications for relief “waived” and ordered his removal to Sri Lanka.²

Upon our review of the record and based on the respondent’s claim of ineffective assistance of counsel, we do not find abandonment of the respondent’s applications for relief. We note that following the Immigration Judge’s removal order, the respondent immediately took action, filed a notice of appeal, and subsequently retained new counsel, and complied with the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) to support a claim of ineffective assistance of counsel. Considering the totality of the circumstances presented in this case as described above, as well as the lack of response by the Department of Homeland Security (DHS) to the respondent’s appeal, we will reverse the Immigration Judge’s April 22, 2019, abandonment finding and remand proceedings to allow the respondent the opportunity to apply for relief from removal.

Accordingly, the following order will be entered.

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


FOR THE BOARD

¹ The respondent is detained in Boston and the Notice of Entry of Appearance as Attorney submitted by the respondent’s counsel reflects that his office is located in New York.

² The respondent submitted documents attached to his appeal brief which shows that the respondent’s former counsel also attempted to file a motion to reopen, in effect acknowledging that he had provided the respondent with ineffective representation. The motion was ultimately rejected by the immigration court as jurisdiction was with the Board.