U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: CARRILLO-NUNEZ, MACIEL

A 200-226-594

Date of this notice: 3/28/2014

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:
Adkins-Blanch, Charles K.
Guendelsberger, John
Hoffman, Sharon

schwarzA
Userteam: Docket

File: A200 226 594 - Dallas, TX Date: MAR 28 2014

In re: MACIEL CARRILLO-NUNEZ

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jonathan Earthman, Esquire

APPLICATION: Continuance; administrative closure

The respondent, a native and citizen of Mexico, appeals the decision of the Immigration Judge, dated June 19, 2013, denying her motion for a continuance while United States Citizenship and Immigration Services ("USCIS") considered her Petition for U Nonimmigrant Status (Form I-918) and ordering her removal from the United States.[1] The Department of Homeland Security ("DHS") has not responded to the appeal. We will sustain the respondent's appeal and remand the record.[2]

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3).

Upon de novo review, we conclude that the Immigration Judge erred in denying the respondent's request for a continuance. *See Matter of Sanchez Sosa*, 25 I&N Dec. 807, 815 (BIA 2012). The DHS expressed no objection to the respondent's request (I.J. at 2; Tr. at 13). Moreover, the respondent presented evidence that she had actually filed her Form I-918, along with the requisite law enforcement certification, with USCIS. Considering these circumstances, we conclude that "good cause" existed for a continuance of these removal proceedings at the time of the respondent's ultimate removal proceedings. Accordingly, we will sustain the respondent's appeal and remand the record to the Immigration Judge for further proceedings. Upon remand, the Immigration Judge should provide the parties with an additional opportunity to present evidence and state their respective positions and further consider the respondent's request for a continuance while USCIS considers her pending Form I-918.

[1] The respondent is subject to removal from the United States because she is an alien who is present in this country without being admitted or paroled by an immigration officer or who arrived at any time or place other than as designated by the Attorney General (I.J. at 1; Tr. at 6; Exh. 1). *See* section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i).

[2] As we will sustain the respondent's appeal, we decline to reach the merits of her motion to administratively close these proceedings at the present time. The respondent is not precluded from renewing the motion before the Immigration Judge upon remand.

Upon remand, the parties are not precluded from raising other issues. For example, it appears that the respondent may also be seeking a continuance while USCIS considers her request for immigration benefits under the Deferred Action for Childhood Arrivals program. Moreover, before the Immigration Judge, the DHS moved for administrative closure of these proceedings (I.J. at 3; Tr. at 14). If upon remand, the DHS renews its motion and the respondent agrees to such measure, the Immigration Judge should administratively close these proceedings. *See Matter of Yewondwosen*, 21 I&N Dec. 1025, 1026 (BIA 1997) ("We believe the parties have an important role to play in these administrative proceedings, and that their agreement on an issue or proper course of action should, in most instances, be determinative.").

For the reasons set forth above, the following order is entered.

ORDER: The respondent's appeal is sustained and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DALLAS, TEXAS

File: A200-226-594 June 19, 2013

In the Matter of

MACIEL CARRILLO-NUNEZ	IN REMOVAL PROCEEDINGS
RESPONDENT	

CHARGE: 212(a)(6)(A)(i) — Present without admission.

APPLICATION: None

ON BEHALF OF RESPONDENT: SHERALYN EDWARDS

ON BEHALF OF DHS: MARGARET M. PRICE

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 26-year-old female, native and citizen of Mexico who entered the United States without inspection on July 3, 2004. A Notice to Appear was issued on April 12, 2012, charging the respondent with removability under the above-cited section. During a Master Calendar Hearing on December 12, 2012, the respondent admitted the allegations and conceded the charge, and removability was established by clear and convincing evidence based on the admissions and concessions. The respondent designated Mexico as the country of removal should that become necessary.

The respondent was afforded an opportunity to apply for any relief that she may be eligible for. She did not apply for relief. However, she did request a continuance for the purpose of pursuing an application under the Department of Homeland Security's Deferred Action for Childhood Arrival program. In addition to that, she requested a continuance for the purpose of filing a U-visa application. The respondent indicated that the certification for the U-visa application had already been approved, and athe continuance was granted for the purpose of perfecting both applications. The case was continued a second time in February, and came for a Master Calendar in June of 2013, more than six months after the Master Calendar, at which the respondent indicated an intention to perfect her applications for DACA and U-visa.

At the reconvened hearing on June 19, the respondent indicated that she wished to have a continuance for the purpose of having a U-visa application adjudicated. That application was submitted into the record and is contained in the record. The application was filed on May 9, 2013. The application is incomplete because it does not contain the required personal statement from the respondent as required by 8 C.F.R. Section 214.14(c)(2)(3).

The respondent has had a significant amount of time to perfect her applications, but has not done so. Given that the respondent waited five months before filing the U visa application after indicating that she already had the certification-- and the application is still not complete and is likely to be delayed--, I am not willing to further continue this case. Therefore, the request for a continuance was denied.

In consideration of the request for a continuance, I have taken into account the factors specified by the Board of Immigration Appeals in the case of Matter of Sanchez, 25 I&N Dec. 807 (BIA 2012). While I recognize that the Department of Homeland Security did not oppose the continuance in this case, however, the application is not

prima facie approvable and there are other procedural factors present in the case which mitigate against a further continuance, namely, the respondent has not been diligent in perfecting the application.

The respondent did not file an application for benefits under the Childhood Arrival program despite having more than six months to do so and indicating at the December hearing that it was her intention to file that application. Therefore, a further continuance for that purpose will not be granted.

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Parties requested administrative closure for the purpose of having the U-visa application adjudicated. That request was denied and it is the opinion of the Immigration Judge it was the intent of the parties to simply circumvent the Judge's ruling on the denial of the request for a continuance.

The respondent was given a further opportunity to request relief and did not do so. Therefore, the following order will be entered:

ORDER

IT IS ORDERED that the respondent be remove from the United States to Mexico on the charges contained in the Notice to Appear.

Please see the next page for electronic signature

R. WAYNE KIMBALL
Immigration Judge

//s//

Immigration Judge R. WAYNE KIMBALL

kimballr on September 5, 2013 at 7:17 PM GMT