



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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West Valley City, UT 84119

Name: GONZALEZ-HERNANDEZ, MARI... A 205-324-473

Date of this notice: 7/14/2015

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:
Grant, Edward R.

Userteam: Docket

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As

Falls Church, Virginia 20530

File: A205 324 473 – West Valley, UT

Date: JUL 14 2015

In re: MARIANA GONZALEZ-HERNANDEZ a.k.a. Marianna Gonzalez
a.k.a. Mariana Gonzalez Fernandez a.k.a. Mariana Gonzales

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lance C. Starr, Esquire

ON BEHALF OF DHS: Adam N. Greenway
Assistant Chief Counsel

APPLICATION: Continuance

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's December 2, 2013, decision. In that decision, the Immigration Judge ordered the respondent removed from the United States to Mexico.¹ The Department of Homeland Security (the "DHS") filed a responsive brief in support of the Immigration Judge's decision. The record will be remanded.

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

The Immigration Judge denied the respondent's motion for a continuance to file a U-visa application (Form I-918) with the United States Citizenship and Immigration Services ("USCIS"). Including other procedural factors, the Immigration Judge discussed the late-stage of the proceedings, his concerns with the viability of the application, and that that application had yet to be filed with USCIS. *See Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012). However, the respondent has since submitted evidence that she filed the I-918 which is now pending before USCIS. In light of the foregoing, the record will be remanded to the Immigration Judge for an update on that status of the respondent's application and further consideration of whether a continuance is warranted.

Accordingly, the following order will be entered.

¹ The respondent does not dispute her removability (I.J. at 2; Resp. Brief at 2). Nor does the respondent dispute the Immigration Judge's determination that her criminal record precludes her from establishing the requisite period of good moral character to qualify for voluntary departure (I.J. at 4; Tr. at 18; Resp. Brief at 2).

A205 324 473

ORDER: The record is remanded for further proceedings.

A handwritten signature in cursive script, appearing to read "E. Grant", is written over a horizontal line.

FOR THE BOARD

Immigrant & Refugee Appellate Center, LLC | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
WEST VALLEY CITY, UTAH

File: A205-324-473

December 2, 2013

In the Matter of

MARIANA GONZALEZ-HERNANDEZ

RESPONDENT

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)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act) as amended, in that the respondent is an alien present in United States without being admitted or paroled or who arrived in United States at any time or place other than designated by the Attorney General.

APPLICATION: Section 240B of the Act, voluntary departure.

ON BEHALF OF RESPONDENT: LANCE C. STARR, Esquire
125 East Main Street, Suite 148
American Fork, Utah 84003

ON BEHALF OF DHS: ADAM GREENWAY, Assistant Chief Counsel
2975 South Decker Lake Drive
West Valley City, Utah 84119

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a single female, native and citizen of Mexico. The Department of Homeland Security issued a Notice to Appear dated October 4, 2013 alleging that the respondent entered the United States at or near an unknown place, on or about an unknown date, and charging the respondent with removability under

Section 212(a)(6)(A)(i) of the Act. See Exhibit 1 in the Record of Proceedings.

On November 5, 2013, the respondent, through counsel, admitted the factual allegations set forth in the Notice to Appear and conceded the charge of removability. Therefore, the charge was sustained.

The respondent designated Mexico as the country of removal and Mexico was directed. The respondent applied for relief from removal in the form of voluntary departure. The respondent also stated that she would be seeking a non-immigrant U-visa with Citizenship and Immigration Services and requested a continuance so that she can pursue that visa with the Department of Homeland Security.

The Immigration Judge was unable to find good cause for a continuance for the respondent to pursue the non-immigrant visa with U.S. Citizenship and Immigration Services. The respondent is currently detained by U.S. Immigration. Additionally, the incident which would give rise to the non-immigrant visa occurred two and a half years ago. The respondent has not even obtained certification from law enforcement to present to U.S. Citizenship and Immigration Services. The respondent, apparently, was not aware of the availability of the non-immigrant visa until after she was placed into removal proceedings.

With those facts and circumstances, the Court was unable to find good cause for a continuance for her to have time to seek an avenue of relief from removal that the Immigration Judge did not have jurisdiction to adjudicate.

The respondent applied for voluntary departure in the alternative. She testified that she would depart the United States on or before the date that she was required to leave. She testified that she would cooperate with U.S. Immigration in her return to Mexico. She had a birth certificate that she could use to gain admission into the Country of Mexico. The respondent acknowledged her conviction history and

Homeland Security has documented that history with State Court records, a Form I-213 and a Logan City Police Department report. See Exhibits 2 and 3 in the Record of Proceedings. The respondent did not oppose their inclusion into the record and they were considered for full evidentiary purposes. Despite what the police department report states, the respondent denied gang membership. She also noted that she had five citizen children. She came to the United States at the age of three.

Because of the respondent's strong family ties in United States and the fact that respondent has lived inside the United States for most of her life, the Immigration Judge was inclined to grant voluntary departure notwithstanding the respondent's recent and significant arrest and conviction history, as reflected in Exhibits 2 and 3 in the Record of Proceedings.

However, the respondent was not in a position to waive appeal of all issues, therefore, pre-conclusion voluntary departure was not available and conclusion voluntary departure requires that the respondent demonstrate that she has been a person of good moral character for at least five years immediately preceding the voluntary departure application. With the arrest and conviction history found at Exhibits 2 and 3, the Immigration Judge was unable to find that the respondent could meet her burden of proving good moral character for the last five years. There are recent convictions for attempted retaliation against a witness, contributing to the delinquency of a minor, simple assault, theft, driving on a suspended license and driving on a denied license. All of these convictions occurred in 2012 and 2013. Additionally, the most recent incident involved an altercation in a public setting at a school. According to the arrest report, the respondent admitted that she and a sister had sought out another girl. The respondent was the only adult present in the scene involving a number of juveniles, which required the police to arrive to sort out the situation. The

respondent, as the adult in the group, facilitated a case of retaliation against another girl that the respondent's sister had a problem with on a preceding day. According to the police report, the respondent readily, knowingly and intentionally involved her two younger sisters in the act of intimidating and witness tampering, which also constituted delinquency of a minor. The respondent was later convicted of those offenses. The police had already told the respondent to avoid all contact with the girls that the respondent pursued in a school parking lot.

With these facts and circumstances surrounding the most recent arrest and the prior conviction history, the Court was unable to find good moral character, which is required for conclusion voluntary departure.

ORDERS

IT IS HEREBY ORDERED that the respondent's application for conclusion voluntary departure under Section 240B of the Act be denied.

IT IS HEREBY ORDERED that the respondent be removed from United States and deported to Mexico on the charge contained in the Notice to Appear.

Please see the next page for electronic

signature

DAVID C. ANDERSON
Immigration Judge

//s//

Immigration Judge DAVID C. ANDERSON

andersda on February 4, 2014 at 2:46 PM GMT