



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] A [REDACTED], J [REDACTED]

A [REDACTED]-158

Date of this notice: 5/1/2020

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

Userteam: Docket

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Falls Church, Virginia 22041

File: A-158 – Houston, TX

Date:

MAY - 1 2020

In re: J-P-A

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gino Mario Mesa, Esquire

APPLICATION: Withholding of removal

The respondent is a native and citizen of El Salvador. He appeals from the May 23, 2018, decision of an Immigration Judge, which denied his application for withholding of removal as abandoned, but granted a period of voluntary departure. Sections 240B(b) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229c(b); 1231(b)(3). The respondent filed a brief concerning the decision of the Immigration Judge, while the Department of Homeland Security (DHS) has not responded to the appeal. The appeal will be sustained, and the case will be remanded to the Immigration Court for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge concluded that the application for withholding of removal was abandoned because the respondent failed to comply with biometrics security checks (IJ at 2-3).

An Immigration Judge may deem certain applications for relief (including withholding of removal) abandoned for failure of the applicant to have fingerprints taken or otherwise complete the biometrics requirement. See 8 C.F.R. §§ 1003.47(a)-(d). In *Matter of D-M-C-P-*, 26 I&N Dec. 644 (BIA 2015), we discussed the procedural prerequisites for such an order. Specifically, in order to conclude that an applicant has abandoned his application for relief by failing to complete certain biometric 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.” *Id.* at 649.

The record supports the conclusion that the Immigration Judge did not provide adequate on-the-record instructions and advisals concerning the necessity of completing the biometrics requirement, as required by regulation and *Matter of D-M-C-P-*, 26 I&N Dec. at 649.

At the July 11, 2017, hearing, the Immigration Judge did not provide the respondent with information concerning the consequences of noncompliance, including the possibility that the application could be deemed abandoned and dismissed, unless the failure to comply resulted from good cause. *Id.*

At the final May 23, 2018, removal hearing, the Immigration Judge did not set forth on the record the circumstances concerning the respondent's noncompliance with the biometrics requirement, and did not provide the respondent an opportunity to argue that failure to comply resulted from good cause (Tr. at 14-18).¹

Accordingly, pursuant to *Matter of D-M-C-P-*, we will sustain the respondent's appeal and remand this record for the Immigration Judge to reissue the biometrics instructions, provide a deadline by which the respondent must provide required biometric information, and provide the requisite advisals regarding abandonment.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order.



FOR THE BOARD

¹ The Immigration Judge says in her decision that at the May 23, 2018, hearing the DHS informed her that fingerprints had not been taken; the respondent could not provide proof that biometrics were requested, and the respondent did not show that there was good cause for the failure to comply with the biometrics requirement (IJ at 2-3). Any such discussion is not included in the transcript of proceedings for the May 23, 2018, removal hearing.