



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

Devine, Mark John  
Law Office of Mark J. Devine  
507 Savannah Hwy  
Charleston, SC 29407

DHS/ICE Office of Chief Counsel - CHL  
5701 Executive Ctr Dr., Ste 300  
Charlotte, NC 28212

Name: A [REDACTED] B [REDACTED] M [REDACTED] J... A [REDACTED]-307

Date of this notice: 6/27/2016

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:  
Greer, Anne J.  
Kendall-Clark, Molly  
O'Herron, Margaret M

Userteam: Docket

For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index/](http://www.irac.net/unpublished/index/)

*[Handwritten signature]*

Falls Church, Virginia 22041

---

File: A-307 – Charlotte, NC

Date: **JUN 27 2016**

In re: M-J-A-B

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark J. Devine, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -  
Immigrant - no valid immigrant visa or entry document

APPLICATION: Reopening

The respondent appeals from the Immigration Judge's October 28, 2015, decision denying her motion to reopen. 8 C.F.R. § 1003.23(b)(1). The Department of Homeland Security ("DHS") has not filed a brief on appeal. We will remand the record to the Immigration Judge for further proceedings and issuance of a new decision.

We review for clear error the findings of fact, including determinations of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

On August 18, 2015, the Immigration Judge issued a removal order based on a finding of removability as charged and the absence of any viable applications for relief. On October 8, 2015, the respondent moved to reopen her proceedings on the grounds that she was eligible for Special Immigrant Juvenile Status ("SIJS"). Sections 101(a)(27)(J), 245(h) of the Act, 8 U.S.C. §§ 1101(a)(27)(J), 1255(h); 8 C.F.R. § 1003.23(b)(1). The motion included a Complaint for Custody filed by the respondent's biological mother in state family court, and a notice of a court hearing scheduled for October 8, 2015, on the motion. The DHS opposed the motion to reopen asserting that the respondent was not eligible for SIJS status because the respondent's biological father is dead. On October 28, 2015, the Immigration Judge denied the motion to reopen on the grounds that the respondent was not eligible for SIJS status because her biological father is dead.

However, the appellate record reflects that on October 21, 2015, the state family court issued an order finding that the respondent's father, when he was alive, had abandoned the respondent, that reunification of the respondent with her father was not possible, that the respondent is under age 21 and not unmarried, and that because of country conditions in Honduras and the fact that the respondent's child support and stability are with her mother in the United States, it would not

be in the respondent's best interest and welfare to return to Honduras.<sup>1</sup> The court order also granted custody of the respondent to her biological mother. Based on the state court's order, the respondent filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant with the United States Citizenship and Immigration Services ("USCIS") on or about October 28, 2015, which remains pending.

Thus, we will remand the record for the Immigration Judge to reassess whether the respondent has established prima facie eligibility for SIJS status, and, if so, whether to continue or administratively close the removal proceedings to allow the USCIS an opportunity to adjudicate the pending I-360. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11; *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).<sup>2</sup>

Accordingly, the following orders will be issued.

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

  
\_\_\_\_\_  
FOR THE BOARD

---

<sup>1</sup> It is not clear why the respondent's counsel did not immediately file a copy of the October 21, 2015, state family court order with the Immigration Court, before the Immigration Judge issued her October 28, 2015, order.

<sup>2</sup> We note that guidance provided to Immigration Judges by the Chief Immigration Judge states that "appropriate time must be given for [USCIS] to adjudicate the Form I-360 after the requisite state or juvenile court findings have been made." Memorandum from Brian M. O'Leary, Chief Immigration Judge, to Immigration Judges (March 24, 2015) (Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities).

-UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
U.S. IMMIGRATION COURT  
5701 Executive Center Drive, Suite 400  
Charlotte, North Carolina 28212

IN THE MATTER OF: A [REDACTED] B [REDACTED] M [REDACTED] J [REDACTED]  
CASE NO. A [REDACTED] 307

ALIEN ATTORNEY: MARK J. DEVINE, ESQ

DECISION ON A MOTION.

IN

[ ] DEPORTATION [ ] EXCLUSION [X] REMOVAL PROCEEDINGS [ ] AOC ASYLUM ONLY


A **MOTION TO RE-OPEN** has been filed in the above captioned case. The Motion has been duly considered and it appears to the Court that:

[ ] The request is timely and reasonable. Therefore, IT IS HEREBY ORDERED that the Motion be GRANTED.

☒ The Motion has been duly considered and it appears to the Court that no substantial grounds have been advanced to warrant its grant. Therefore, IT IS HEREBY ORDERED that the Motion be and the same is hereby DENIED. *The respondent has presented conflicting evidence about her eligibility for SIJS. Respondent's father is deceased and therefore SIJS is not available to respondent.*

[ ] Adjourn to individual / master calendar hearing on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

Dated this 28 day of OCT, 2015

  
\_\_\_\_\_  
Hon. THERESA HOLMES-SIMMONS  
U.S. Immigration Judge

This document was served to:

- ☒ District Counsel  
☒ Counsel for Respondent / Applicant  
☐ Respondent / Applicant

Mailed out: 10.29.15 By: P99