



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: HERNANDEZ, GLADYS MARGA... A 095-080-333

Date of this notice: 8/23/2013

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:
Neal, David L
Greer, Anne J.
Kendall-Clark, Molly

schuckec
User team: Docket

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Falls Church, Virginia 22041

File: A095 080 333 – Charlotte, NC

Date: AUG 23 2013

In re: GLADYS MARGARITA HERNANDEZ a.k.a. Gladis Hernandez
a.k.a. Gladys Hernandez Toledo

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jordan G. Forsythe, Esquire

ON BEHALF OF DHS: Caroline Youngblade
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Temporary Protected Status

The respondent, a native and citizen of Honduras, appeals the Immigration Judge's November 9, 2011, decision finding her ineligible for Temporary Protected Status ("TPS") and ordering her removed. *See* section 244(c) of the Immigration and Nationality Act, 8 U.S.C. § 1254(c); 8 C.F.R. § 244.2. The record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including credibility determinations and (under the law of the Circuit with jurisdiction over this case) the likelihood of future events, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *see Turkson v. Holder*, 667 F.3d 523, 530 (4th Cir. 2012). We review all other issues, including questions of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent's application was filed before May 11, 2005, and therefore is governed by the provisions of the REAL ID Act. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The Immigration Judge did not prepare a separate oral or written decision in this matter setting out the reasons for the decision. An explanation of the reasons in the transcript is not sufficient. Accordingly, the record will be returned to the Immigration Judge for preparation of a full decision. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). In doing so, the Immigration Judge should make an explicit finding concerning the respondent's competence for purposes of immigration proceedings, given that record evidence and the respondent's testimony contain indicia of incompetency (*see* Tr. at 17-27; Exh. 2, Tab H; Respondent's Br. at 2-3, 6-7). *See Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011). As appropriate, the Immigration Judge may conduct additional proceedings and receive evidence relating to the respondent's competence and any safeguards that may be necessary to ensure that the proceedings comport with the respondent's due process rights.

Because the Immigration Judge made no findings of fact, the record before us is not sufficiently developed to permit us to rule on the respondent's appellate argument that she is entitled to equitable tolling of the July 5, 1999, deadline for the TPS initial registration period on account of her mental incompetence and physical illness (Respondent's Br. at 3). *See* AAU WAC 06 007 70270, 2007 WL 5337538 (INS 2007) (accepting untimely TPS filing deadline because Los Angeles Office of Department of Homeland Security failed to forward complete, timely filed TPS application to processing center). On remand, the Immigration Judge should enter appropriate findings of fact and conclusions of law concerning the respondent's arguments that her late-filed TPS application should be adjudicated on its merits.

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



FOR THE BOARD

IMMIGRATION COURT
5701 EXECUTIVE CENTER DR. #400
CHARLOTTE, NC 28212

In the Matter of

Case No.: A095-080-333

HERNANDEZ, GLADYS MARGARITA
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 11.9.11.
This memorandum is solely for the convenience of the parties. If the
proceedings should be appealed or reopened, the oral decision will become
the official opinion in the case.

- [☒] The respondent was ordered removed from the United States to HONDURAS
~~on, in the alternative to~~
- [] Respondent's application for voluntary departure was denied and
respondent was ordered removed to or in the
alternative to .
- [] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of \$ _____
with an alternate order of removal to .

Respondent's application for:

- [] Asylum was () granted () denied () withdrawn.
- [] Withholding of removal was () granted () denied () withdrawn.
- [] A Waiver under Section _____ was () granted () denied () withdrawn.
- [] Cancellation of removal under section 240A(a) was () granted () denied
() withdrawn.

Respondent's application for:

- [] Cancellation under section 240A(b)(1) was () granted () denied
() withdrawn. If granted, it is ordered that the respondent be issued
all appropriate documents necessary to give effect to this order.
- [] Cancellation under section 240A(b)(2) was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- [] Adjustment of Status under Section _____ was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
- [] Respondent's application of () withholding of removal () deferral of
removal under Article III of the Convention Against Torture was
() granted () denied () withdrawn.
- [] Respondent's status was rescinded under section 246.
- [] Respondent is admitted to the United States as a _____ until _____.
- [] As a condition of admission, respondent is to post a \$ _____ bond.
- [] Respondent knowingly filed a frivolous asylum application after proper
notice.
- [] Respondent was advised of the limitation on discretionary relief for
failure to appear as ordered in the Immigration Judge's oral decision.
- [] Proceedings were terminated.
- [☒] Other: TPS APPLICATION DENIED FOR LACK OF ELIGIBILITY.
Date: Nov 9, 2011

BARRY J. PETTINATO
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

By RRP 12.9.11

* SEE INA § 244(c); 8 CFR § 244.2