



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: LOPEZ-LOPEZ, JUAN

A 205-920-665

Date of this notice: 12/11/2014

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:
Cole, Patricia A.
Wendtland, Linda S.
Pauley, Roger

Userteam: Docket

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Donna Carr

Falls Church, Virginia 20530

File: A205 920 665 - San Diego, CA

Date:

DEC 11 2014

In re: JUAN LOPEZ-LOPEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pieter D. Speyer, Esquire

ON BEHALF OF DHS: Kathryn E. Stuever
Senior Attorney

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 (conceded)

APPLICATION: Continuance

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's February 6, 2014, decision denying his request for a continuance to apply for a U visa, available to certain victims of physical or mental abuse as outlined at section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U).¹ The record will be remanded for further proceedings consistent with this decision.

We review for clear error the findings of fact, including the determination 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 matters of discretion, and judgment. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent initially appeared before the Immigration Judge on May 1, 2013, in Eloy, Arizona, and requested a continuance and a venue transfer to San Diego, California (I.J. at 1; Tr. at 1-12; Exhs. 4-5). Both were granted, and on August 6, 2013, the respondent appeared in San Diego, California, where he conceded his removability but requested a continuance in order to prepare his case (I.J. at 1-2; Tr. at 13-20; Exh. 6). At the continued hearing on September 12, 2013, the respondent sought an additional continuance to apply for a U visa,

¹ The Immigration Judge also found the respondent statutorily ineligible for post-conclusion voluntary departure pursuant to section 240B(b) of the Act, 8 U.S.C. § 1229c(b) (I.J. at 3-4). The respondent conceded his ineligibility and does not challenge the Immigration Judge's denial of that form of relief on appeal (I.J. at 4; Tr. at 42-46; Resp. Br. at 1-2). Therefore, that request is not before us.

among other things, and the Immigration Judge granted the continuance on the condition that the respondent submit evidence of his U visa eligibility by November 29, 2013 (I.J. at 2; Tr. at 30).

The respondent did not file the requested proof, but instead filed a motion for a 2-week extension of the deadline (I.J. at 2; Exh. 11). When the respondent did not file the documents during the requested extension period, the Immigration Judge deemed the motion moot (I.J. at 2; Exh. 11). Accordingly, when the respondent again sought a continuance at his February 6, 2014, hearing, the Immigration Judge denied the request (I.J. at 2; Tr. at 27-30, 41). The Immigration Judge denied the respondent's request for a continuance to pursue a U visa in part because he found that the respondent made insufficient attempts to contact "government" counsel to obtain the documents necessary for pursuing this application (I.J. at 3).

On appeal, the respondent alleges that his A-file plays a significant role in his ability to qualify for a U visa (Resp. Br. at 2). He further alleges that his due process rights were violated when he was denied access to his A-file (Resp. Br. at 2 (citing *See Dent v. Holder*, 627 F.3d 365, 373-74 (9th Cir. 2010)) (noting that an alien in removal proceedings is entitled to a copy of his A-file from the government and should not have to rely on the lengthy process under the Freedom of Information Act because "[i]t would indeed be unconstitutional if the law entitled an alien in removal proceedings to his A-file, but denied him access to it until it was too late to use it").

We agree with the respondent that *Dent v. Holder*, *supra*, is applicable here and provides an alien with an absolute right to view the contents of his A-file. *Id.* at 374. Therefore, although we agree with the Immigration Judge that the respondent did not exercise diligence between his hearings, thus undermining good cause for a continuance, remand is still required for the Immigration Judge to consider the implications of, and to allow the DHS an opportunity to comply with, *Dent v. Holder*, *supra*. See 8 C.F.R. §§ 1003.1(d)(3)(ii), 1003.29; *see also Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987). Thus, we conclude remand is necessary to enable the parties to further develop the record, including any issues that relate to the respondent's potential eligibility for relief, how his eligibility for relief may relate to the contents of his A-file, and the propriety of any further continuances. Accordingly, the following orders will be entered.

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

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
SAN DIEGO, CALIFORNIA

File: A205-920-665

February 6, 2014

In the Matter of

JUAN LOPEZ-LOPEZ

RESPONDENT

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)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act

APPLICATIONS: Continuance; voluntary departure at conclusion of proceedings

ON BEHALF OF RESPONDENT: PIETER D. SPEYER, Esquire
7825 Bay Avenue, Suite 200
La Jolla, California 92037

ON BEHALF OF DHS: KATHRYN STUEVER, Esquire
Assistant Chief Counsel
Department of Homeland Security
San Diego, California

FINDING, ORAL DECISION AND ORDERS

This Court has jurisdiction in this case by the Government's filing of the Notice to Appear dated April 18, 2013, which was personally serviced upon the respondent. Based upon respondent's motion for change of venue, the Eloy, Arizona Court granted that motion and changed venue to the San Diego Court on May 15, 2013.

At the hearing on August 6, 2013, respondent, through prior counsel,

appeared and conceded service of the Notice to Appear, but requested an opportunity to prepare. At the rescheduled hearing on September 12, 2013, respondent, through prior counsel, admitted and conceded to all the allegations and charge contained in the Notice to Appear. Prior counsel advised the Court that removability is not an issue in this case. Prior counsel also declined to designate a country of removal on respondent's behalf. Based upon the pleadings of record, the Court finds that respondent is removable as charged by clear and convincing evidence. Government recommended respondent's native country of Guatemala as country of removal should it become necessary. Prior counsel for the respondent also advised the Court that respondent probably would not be eligible for protection claim because he has no fear of returning to Guatemala. Instead, prior counsel advised the Court that because respondent was held captive for several days by people who brought him to the United States, he would like an opportunity to apply for a U visa or a T visa before the Department of Homeland Security and at the same time request the Department of Homeland Security for prosecutorial discretion in this case. The Court provided the respondent with that opportunity and granted the respondent until November 29, 2013 to file proof with the Court of those requests and applications.

Respondent failed to timely file proof of such requests to the Department of Homeland Security, but instead on the day of the deadline for showing such proof to the Court, respondent, through prior counsel, filed a motion for two weeks extension to present such proof. The two weeks went by without any evidence of such filing and the Court on January 28, 2014 deemed that motion as moot and dismissed that motion. The Court notes for the record that it was not until January 22, 2014 that respondent, through prior counsel, presented what was filed as a courtesy copy of request for prosecutorial discretion.

On February 6, 2014, respondent appeared with current counsel and through counsel moved the Court for another continuance for him to file a Freedom of Information Act request or any other discovery requests before the Department of Homeland Security so as to gather the required evidence for submission of a U visa application. Counsel for the Government opposed such motion. According to respondent's counsel, nothing has been done since the hearing in September in terms of even a mere attempt to contact the Government to obtain whatever information the respondent claimed he was trying to gather. Furthermore the respondent's request for prosecutorial discretion apparently had been declined by the Department of Homeland Security. Counsel also advised the Court that there is no application for U visa or T visa or any action attempting to obtain any certification by the required law enforcement authority for U visa purposes. As indicated earlier, the respondent, through counsel, advised the Court that respondent has not even contacted the Government counsel in an attempt to try to seek whatever evidence he needed for law enforcement certification. Based upon the record, the Court finds no good cause in continuing this case further. At the last hearing the Court made it clear that if the respondent did not have any evidence of filing of prosecutorial discretion granted by the Government or any evidence of filing of U visa and T visa, the hearing today ~~is~~ would be for respondent's request for voluntary departure prior to conclusion of proceedings, as identified by respondent's prior counsel.

Upon denial of respondent's motion for continuance, respondent's current counsel identified to the Court that respondent is now merely seeking voluntary departure at conclusion of proceedings. Counsel for the Government advised the Court and notified respondent's counsel that because the charging document was issued within a year of respondent's arrival, respondent is statutorily ineligible for voluntary

departure at the conclusion of proceedings. The Court agrees. Thereafter respondent was given an opportunity to discuss with his counsel as to whether or not respondent would also be seeking voluntary departure prior to conclusion of proceeding as an alternative. After a discussion, respondent, through counsel, advised the Court that he would only be seeking voluntary departure at the conclusion of proceedings and take an appeal of the Court's determination. As this case stands before the Court, respondent has failed to establish eligibility for voluntary departure at conclusion of proceedings. By respondent's actions, through counsel, that he is going to appeal the Court's decision, he is also not eligible for voluntary departure prior to completion of proceedings even if he would have asked the Court to be considered for such a request. There is no other application applied for or otherwise established by the respondent. Respondent, through counsel, advised the Court that voluntary departure is the only relief the respondent is seeking before this Court other than his motion for continuance which has been denied. The record does not contain any pending relief applications on which the Court can adjudicate on the merits.

Based upon the forgoing, the following orders shall therefore be entered.

ORDERS

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

IT IS FURTHER ORDERED that the respondent's requests for voluntary departure at conclusion of proceedings be denied.

THIS TRANSCRIPT OF THE ORAL DECISION WAS REVIEWED ON MARCH 25, 2014, WITHOUT THE BENEFIT OF THE RECORD OF PROCEEDINGS.

Please see the next page for electronic

signature

PHILIP S. LAW
Immigration Judge

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//s//

Immigration Judge PHILIP S. LAW

lawp on March 25, 2014 at 2:57 PM GMT