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

WOL WOL, JOHN DENG
[redacted]

DHS/ICE Office of Chief Counsel - OMA
1717 Avenue H, Room 174
Omaha, NE 68110

Name: WOL WOL, JOHN DENG

A 094-695-752

Date of this notice: 5/7/2018

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.
Wendtland, Linda S.
Pauley, Roger

Userteam: Docket

File: A094 695 752 – Omaha, NE

Date: MAY - 7 2018

In re: John Deng Wol WOL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Anna L. Speas
Assistant Chief Counsel

APPLICATION: Remand

The respondent, a native and citizen of South Sudan, appeals the Immigration Judge's June 21, 2017, decision ordering his removal to South Sudan. The Department of Homeland Security (DHS) has filed an opposition to the respondent's appeal. The respondent's appeal will be sustained and the record will be remanded to the Immigration Judge for further proceedings.

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 all other issues, including issues of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii); *see also Matter of Z-Z-O*, 26 I&N Dec. 586 (BIA 2015).

The record indicates that on June 30, 2010, the respondent was granted lawful permanent resident status (LPR) in the United States and that on or about September 22, 2010, the respondent returned to South Sudan and remained outside the United States for more than 4 years (Exh. 1). The record also shows that on February 13, 2015, the respondent applied for admission at the Chicago O'Hare International Airport as a returning LPR (Exh. 1). A Notice to Appear (NTA) was issued that same day, charging the respondent with inadmissibility under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid immigrant visa or entry document (Exh. 1).

During a merits hearing held on June 21, 2017, the Immigration Judge allowed the respondent, who appeared pro se, the opportunity to plead to the NTA. The Immigration Judge read the allegations and charges to the respondent and the respondent "agreed" with the allegations and charges (Tr. at 16-18). The Immigration Judge sustained the charge of removability and asked the respondent a few preliminary questions relating to his desire to remain in the United States, the whereabouts of his family, and whether he had fear of returning to South Sudan (Tr. at 19-21). The respondent informed the Immigration Judge that his family had fled their home in South Sudan because of "war" (Tr. at 19, 22). The Immigration Judge ultimately determined that the respondent did not have any relief available and ordered his removal to South Sudan (Tr. at 21-23). The Immigration Judge did not prepare a separate oral or written decision in this matter. *See* 8 C.F.R. §§ 1003.37, 1240.12.

On appeal, the respondent argues in part that he did not understand the significance of what he was admitting when he pled to the NTA (IJ at 18). Upon our review of the record, based on the manner in which the Immigration Judge recited the charges and allegations to the respondent during the merits hearing without explanation, and the manner in which the respondent responded and pled to the charge in the NTA, we find that the record supports the respondent's contention (Tr. at 16-18). Thus, we find that the Immigration Judge's determination as to the respondent's removability must be vacated and the record remanded to the Immigration Judge in order to allow the respondent the opportunity to knowingly address the allegations and charges in the NTA.

Also, the record indicates that the DHS had acknowledged during the February 8, 2017, hearing that abandonment of the respondent's LPR status was at issue (Tr. at 11). On appeal, the respondent maintains that he did not intend to abandon his LPR status. An alien lawfully admitted for permanent residence in the United States is not regarded as seeking admission unless, among other things, the alien has abandoned or relinquished that status. *See* section 101(a)(13)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(C). Where an applicant for admission to the United States has a colorable claim to returning resident status, the burden is on the DHS to show by clear, unequivocal, and convincing evidence that the applicant should be deprived of his LPR status. *See Matter of Huang,* 19 I&N Dec. 749 (BIA 1988).

In determining whether the DHS has met its burden of proof, we look to whether the alien is returning to an unrelinquished lawful permanent residence after a temporary visit abroad. *Id.* at 753. The intention of the alien, when it can be ascertained, will control. *Id.; Matter of Kane,* 15 I&N Dec. 258 (BIA 1975). Such intent may be determined by examining the location of family ties, property holdings, job, and whether the alien intended to return to the United States as a place of employment or business or as an actual home. *Id.* We have also considered the applicant's purpose in departing from the United States, whether the visit abroad can be expected to terminate within a relatively short period of time, and whether the termination date can be fixed by some early event. *Matter of Kane,* 15 I&N Dec. at 258. An alien's professed intent to return to the United States without more is not sufficient to support the alien's case. *Matter of Huang,* 19 I&N Dec. at 755.

The Immigration Judge did not provide the DHS with the opportunity to establish abandonment of the respondent's LPR status. As such, upon remand, the Immigration Judge must also allow the parties the opportunity to address abandonment of the respondent's LPR status. Should the DHS prevail in establishing that, despite his status as a returning legal permanent resident, the respondent is to be regarded as an alien "seeking admission" under section 101(a)(13)(C) of the Act, the burden would then shift to the respondent to demonstrate that he is not inadmissible, pursuant to section 240(c)(2)(A) of the Act. The respondent should be provided with the opportunity to seek any relief from removal for which he is eligible, including any potential waiver of any documentary requirements to which the respondent may be subject as a result of the length of his absence from the United States. *See* section 211(b) of the Act, 8 U.S.C. § 1181(b); 8 C.F.R. § 1211.4. The parties should also have the opportunity to provide additional evidence if necessary relating to the issues of removability, abandonment of the respondent's LPR status, and available relief from removal. In view of the foregoing, we will sustain the respondent's appeal and remand the record to the Immigration Judge for further proceedings.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained and the Immigration Judge's June 21, 2017, decision is vacated.

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

FOR THE BOARD

IMMIGRATION COURT
1717 AVENUE H, SUITE 100
OMAHA, NE 68110

In the Matter of

Case No.: A094-695-752

WOL WOL, JOHN DENG
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 21 June 2017
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.

[X] The respondent was ordered removed from the United States to SOUTH SUDAN.

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to SOUTH SUDAN.

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to SOUTH SUDAN.

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: _____.

Date: ~~Feb 8, 2017~~ 21 June 2017

Nancy J Paul
NANCY J. PAUL
Immigration Judge

DHS R
Appeal: Waived/Reserved Appeal Due By: Jul 21, 2017