



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 20530

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Immigrant & Refugee Appellate Center  
3602 Forest Drive  
Alexandria, VA 22302**

**DHS/ICE Office of Chief Counsel - WAS  
1901 S. Bell Street, Suite 900  
Arlington, VA 22202**

**Name: VARGAS ALBARRACIN, GISELA**

**A 097-168-593**

**Date of this notice: 12/30/2014**

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:  
Hoffman, Sharon

Userteam: Docket

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Falls Church, Virginia 20530

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File: A097 168 593 – Arlington, VA

Date: DEC 30 2014

In re: GISELA VARGAS ALBARRACIN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ben Winograd, Esquire

ON BEHALF OF DHS: Tyler Wood  
Assistant Chief Counsel

APPLICATION: Continuance; remand

The respondent, a native and citizen of Peru, appeals the decision of the Immigration Judge, dated June 6, 2013, denying her request for a further continuance and granting voluntary departure. The Department of Homeland Security (DHS) opposes the appeal. The record will be remanded.

On appeal, the respondent seeks remand and has submitted additional documentation to support her argument that proceedings should be administratively closed due to her marriage to a United States citizen. The respondent avers that she is not seeking to adjust status here, but instead will seek a provisional unlawful presence waiver prior to departing from the United States for consular processing. *See* 8 C.F.R. § 212.7(e). In addition, we note that the U.S. Citizenship and Immigration Service website indicates that the visa petition filed by her United States citizen spouse was approved on August 21, 2014. Under the circumstances of this case, we find that a remand is warranted. Upon remand, the Immigration Judge and the parties should address whether the respondent is likely to qualify for a provisional unlawful presence waiver and, if so, whether administrative closure would be appropriate.

Accordingly, the following order shall be entered:

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

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ARLINGTON, VIRGINIA

File: A097-168-593

June 6, 2013

In the Matter of

GISELA VARGAS ALBARRACIN

RESPONDENT

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)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) INA, as amended - in the United States  
without being admitted or paroled.

APPLICATION: A further continuance.

ON BEHALF OF RESPONDENT: LAUREN BOGT, Esquire  
Immigration Law, PLLC  
2121 Eisenhower Avenue  
Suite 200  
Alexandria, Virginia 22314

ON BEHALF OF DHS: TYLER WOOD, Esquire  
Assistant Chief Counsel

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent is a married female who is a native and citizen of Peru. Through prior counsel, respondent admitted allegations 1 and 2 of the Notice to Appear dated July 25, 2007. She denied allegations 3, 4 and the charge. However, based on her failure to submit any evidence to sustain her burden of showing a legal admission or

parole into the United States, I find that the charge under Section 212(a)(6)(A)(i) of the Act has been established by clear and convincing evidence.

This case has been pending since September 18, 2007. During that time, the case has been continued at least ten prior times for various reasons. At a prior hearing I made it clear that if the respondent was not successful in obtaining prosecutorial discretion from the DHS, it was time to bring this case to a final conclusion through voluntary departure or a final order.

Today, the respondent appears and asks for yet another continuance of the case. The DHS opposes a continuance. The DHS also opposes administrative closing. While normally administrative closing might be an option, the DHS points out that the respondent has a very recent DWI conviction, which is a factor in exercising discretion. For that reason and the fact that this case has been continued numerous times previously, the DHS opposes further continuances.

I agree with the DHS that it is time for this case to become final. The respondent used extremely bad judgment in getting in trouble at a time when she needed discretionary relief from both the DHS and this Court. Additionally, during the more than five years this case has been pending, the respondent has had more than adequate opportunity to explore all possible resolutions of her case. To date, she has been able to submit no application that I can actually grant. I see little reason why the respondent cannot return to Peru and await visa processing there assuming that her I-130 petition is ultimately approved. I note that she would not be eligible to adjust status in the United States without a waiver and it appears that the DHS may well be opposed to granting that waiver.

For the foregoing reasons, I find that the balance of equities at this point tips in favor of the DHS. Consequently, I will deny the respondent's application for yet another

continuance.

The respondent appears eligible for the minimal relief of voluntary departure following hearing and I will grant her that relief in the exercise of my discretion. Consequently, the following orders will enter.

**ORDER**

The respondent's application for further continuance is denied.

**FURTHER ORDER**

In lieu of an order of removal, the respondent is allowed to depart voluntarily from the United States without expense to the Government within 60 days from the date of this order or any extension beyond that time as may be granted by the District Director or the Board of Immigration Appeals. The respondent is required to post with the District Director a voluntary departure bond of \$500 within five business days from this order. The respondent is required to notify the Board of Immigration Appeals of compliance with this provision in accordance with the Board's procedures. In the event that the respondent fails to comply with the foregoing terms, the respondent shall be removed from the United States to Peru on the charge contained in the Notice to Appear.

**Please see the next page for electronic**

**signature**

PAUL WICKHAM SCHMIDT  
United States Immigration Judge

//s//

Immigration Judge PAUL W. SCHMIDT

schmidtp on October 28, 2013 at 1:48 PM GMT