U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: L[redacted], M[redacted] S[redacted]

A [redacted]-181

Date of this notice: 12/31/2019

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:
Noferi, Mark
Creppy, Michael J.
Liebowitz, Ellen C

Userteam: Docket

File: [redacted]-181 – Batavia, NY

Date: DEC 3 1 2019

In re: M[redacted] S[redacted] L[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert F. Graziano, Esquire

APPLICATION: Termination; cancellation of removal under section 240A(a) of the Act; asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Burma (Myanmar), appeals from the July 24, 2019, decision of the Immigration Judge finding him removable, denying as abandoned his applications for cancellation of removal for certain permanent residents; asylum; withholding of removal; and protection under the Convention Against Torture, and ordering him removed from the United States. *See s*ections 240A(a), 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229b(b), 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.18. The Department of Homeland Security (DHS) has not filed any response to the appeal. The record will be remanded for further proceedings consistent with this decision.

We review the findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was admitted to the United States as a refugee on June 9, 2009, and adjusted his status to lawful permanent resident as of that date (Tr. at 10; Exh. 1). The DHS issued an NTA alleging, inter alia, that in 2018, the respondent pled guilty to attempted criminal possession of a weapon in the second degree under N.Y. Penal Law § 265.03(03); he was charged as removable due to a conviction for a firearms offense under section 237(a)(2)(C) of the Act, 8 U.S.C. § 1227(a)(2)(C) (Exh. 1). The Immigration Judge found the respondent removable as charged, denied his applications for relief and protection as abandoned, and ordered him removed from the United States. This appeal followed.

We will remand the record to the Immigration Judge for further proceedings and to issue a new decision. Initially, we point out that in her July 24, 2019, decision, the Immigration Judge stated that at a hearing on May 1, 2019, the respondent conceded the allegations and charges in the Notice to Appear (NTA). However, the respondent denied factual allegation number 5 in the NTA and removability (Tr. at 10-11; Exh. 1). Moreover, the respondent filed a motion to terminate specifically challenging his removability; the Immigration Judge summarily denied the motion on April 30, 2019, but provided no specific reasoning except referring to the DHS's brief. She also stated on the record that no findings of removability had been made (Tr. at 13). In her final decision, the Immigration Judge did not provide any reasoning regarding removability, except to state that "the respondent's removability has previously been established." Under these

circumstances, the Immigration Judge should reassess the contested issue of removability in light of the specific arguments presented by both parties and provide reasoning to support her decision.

On appeal, the respondent also argues that the Immigration Judge erred in denying his applications for relief and protection as abandoned because he did not file them by the June 25, 2019, deadline (IJ Order dated July 24, 2019; Tr. at 14; Respondent's Br. at 3-6). However, the Immigration Judge did not provide any reasoning for her decision finding the applications abandoned, which was issued before the final hearing scheduled for July 25, 2019. On appeal, the respondent has filed an uncontested affidavit regarding the circumstances surrounding the filing of the application. On remand, the Immigration Judge should reconsider the issue of abandonment in light of the arguments presented by the respondent on appeal.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings and issuance of a new decision.

FOR THE BOARD