**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*

**LOPEZ FIALLOS, JOSE FRANCISCO**
**508 SIMON RD**
**YOUNGSVILLE, LA 70592**

**DHS/ICE Office of Chief Counsel - NOL**
**1250 Poydras Street, Suite 325**
**New Orleans, LA 70113**

**Name: LOPEZ FIALLOS, JOSE FRANCI...** **A 200-216-689**

**Date of this notice: 4/8/2016**

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:
Pauley, Roger

Userteam: Docket

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File: A200 216 689 – New Orleans, LA Date: APR 0 8 2016

In re: JOSE FRANCISCO LOPEZ-FIALLOS a.k.a. Jose Francisco Lopez

IN REMOVAL PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Robert Weir
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 (conceded)

APPLICATION: Continuance; remand

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's September 9, 2014, decision ordering him removed from the United States.[1] He has also filed new evidence on appeal that we construe as a motion to remand. The Department of Homeland Security ("DHS") opposes the respondent's appeal. The respondent's request for a waiver of the appellate filing fee is granted. *See* 8 C.F.R. § 1003.8(a). The record will be remanded for further proceedings consistent with this order and the entry of a new decision.

We review findings of fact for clear error, including credibility findings. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

[1] The respondent's Notice of Appeal ("NOA") was due on or before October 9, 2014. *See* 8 C.F.R. § 1003.38(b) (explaining that an NOA must be filed within 30 calendar days following the issuance of the Immigration Judge's oral decision, extended to the next business day if the 30th day falls on a Saturday, Sunday, or legal holiday). The Board does not have the authority to extend the 30-day time limit for filing appeals and can only accept a late-filed matter on certification if exceptional circumstances are present. 8 C.F.R. § 1003.1(c); *Matter of Liadov*, 23 I&N Dec. 990, 993 (BIA 2006). Here, we conclude that certification is appropriate because the respondent is not represented by counsel and has made several attempts to properly file his NOA. Specifically, the respondent unsuccessfully attempted to file his NOA on two prior occasions, including for the first time before the October 9th due date. Both were rejected, however, due to procedural errors in the respondent's completion of the certificate of service.



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The facts of this case are not in dispute. The respondent's case was continued several times between June 20, 2011, when the DHS served the respondent with a Notice to Appear, and his final hearing, held on September 9, 2014 (I.J. at 1-2; Tr. at 7-12, 14-15, 17-21, 23; Exh. 1). The respondent appeared at his final hearing without counsel, at which time the Immigration Judge concluded that the respondent had no relief available to him and ordered him removed (I.J. at 2-3; Tr. at 39-40).

On appeal, the respondent maintains that he asked the Immigration Judge to grant him more time before a removal order was entered against him.[2] He further asserts that his situation has changed since the Immigration Judge ordered him removed. Specifically, he claims that he married his United States citizen wife during the pendency of this appeal, and he has provided the couple's marriage certificate dated September 18, 2014. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (allowing us to take administrative notice of "commonly known facts such as the contents of official documents"); *Matter of S-H-*, *supra*, at 465-66.

The record supports the Immigration Judge's conclusion that, at the time of the respondent's final removal hearing, he had not established eligibility for relief (I.J. at 2-3). *See* section 240(c)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(4). However, on appeal, as the respondent has established that he is now married to a United States citizen, we will construe his pro se appeal as a motion to remand, and we conclude that remand is necessary and appropriate in allowing the Immigration Judge to further develop the record and determine whether the respondent is now prima facie eligible for any forms of relief from removal. *See Price v. Digital Equipment Corporation*, 846 F.2d 1026, 1028 (5th Cir. 1988) (stating that the briefs of pro se appellants should be construed liberally); *see also Matter of A-H-*, 23 I&N Dec. 774, 790-91 (A.G. 2005) (stating that the Board's authority to remand for further fact finding ensures that the Board "is not denied essential facts that bear on the appropriate resolution of a case"); *see also Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992); 8 C.F.R. § 1003.2(c)(1).

While we have limited fact-finding authority on appeal, we note that the record contains strong indicia of a bona fide marriage between the respondent and his United States citizen wife. *See Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002) (explaining that a marriage entered into after the commencement of proceedings must be supported by clear and convincing evidence of the bona fides to establish that the petitioning spouse will prevail on any related visa petition application); *see also* sections 204(g), 245(e)(3) of the Act, 8 U.S.C. §§ 1154(g), 1255(e)(3).

Namely, in addition to the respondent's marriage certificate, the respondent maintains that he and his wife have been in a committed relationship for 6 years and were engaged for 2 years

[2] We have considered the entirety of the respondent's arguments on appeal. However, as the respondent has not paginated his appeal brief, we are unable to provide citations to specific pages of his brief in this decision. *See* Board of Immigration Appeals Practice Manual § 4.6(b) at 56 (November 2, 2015), http://www.justice.gov/eoir/board-immigration-appeals-2 ("Briefs should always be paginated.").





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prior to their marriage.[3] He also claims that he (1) cares for his wife's three children, whose biological father is in prison, and (2) offers critical support to his wife, who suffers from a mental illness and has experienced suicidal episodes. Finally, the respondent indicates that his wife is preparing an Alien Relative Petition (Form I-130) to file on his behalf.[4]

Based on the foregoing, we conclude that remand is appropriate for the Immigration Judge to consider the respondent's eligibility for any available forms of relief related to his recent marriage. *See* section 240(b)(1) of the Act; 8 C.F.R. § 1240.11(a)(2); *Matter of J-F-F-*, 23 I&N Dec. 912, 922 (A.G. 2006) (stating that "[i]t is appropriate for Immigration Judges to aid in the development of the record . . . particularly where an alien appears pro se and may be unschooled in the deportation process"). Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.

FOR THE BOARD

[3] The record contains support for the respondent's assertion that his then-fiancée appeared with him at his final hearing (Tr. at 36-40).

[4] We cannot ultimately resolve the veracity of the respondent's assertions on appeal but conclude that his assertions are sufficient to warrant further development of the record by the Immigration Judge. *See* 8 C.F.R. § 1003.1(d)(3)(iv).





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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
NEW ORLEANS, LOUISIANA

File: A200-216-689 September 9, 2014

In the Matter of

| | | |
|---|---|---|
| JOSE FRANCISCO LOPEZ FIALLOS | ) | IN REMOVAL PROCEEDINGS |
| RESPONDENT | ) | |

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, as an alien who is present in the United States without admission or parole or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATION: None

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: ROBERT WEIR, ESQUIRE
ASSISTANT CHIEF COUNSEL
1250 POYDRAS STREET, ROOM 2100
NEW ORLEANS, LOUISIANA 70113

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 34-year-old, native and citizen of Honduras to whom a Notice to Appear was issued on January 20, 2011. Exhibit 1. The United States Department of Homeland Security (DHS) brought these removal proceedings against respondent under the authority of the Immigration and Nationality Act (Act). In July of 2011 respondent admitted the allegations in the Notice to Appear that was dated June

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20, 2011 and conceded removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. See Exhibit 1. The Court found the respondent removable as charged by evidence that was clear and convincing. See 8 C.F.R. Section 1240.8(a). The respondent's case started in Houston, Texas and it appears that the Form I-213, record of deportable/inadmissible alien, dated June 20, 2011 was marked at that time as Exhibit 2.

The respondent had previously retained counsel. However, by motion filed with the Immigration Court in New Orleans, Louisiana on June 19, 2013 counsel requested to be withdrawn as counsel of record. The request was granted by the Immigration Judge on July 8, 2013. The case had previously begun in Houston, Texas, however, venue was changed to New Orleans prior to April 16, 2013.

Respondent came to Court on July 7, 2014, indicated that he previously had an attorney and that attorney had withdrawn and that he would seek a new attorney in the New Orleans area. The respondent was provided with a copy of the list of attorneys in the New Orleans area and the case was reset to September 9, 2014 at 10:00.

On September 9, 2014 the Court fully explained the respondent his rights and he indicated that he did not have an attorney. The Court noted, for the record, that pleadings had been taken in July 2011, that the respondent is not married and has no children. The respondent testified that he first came to the United States in March of 2001 or 2002 illegally. The respondent also indicated that he had no fear of returning to his native country of Honduras. The Court also asked the respondent if he had funds to depart the United States for purposes of voluntary departure. The respondent said no.

Accordingly, the Court finds that the respondent has no relief from deportation available to him. Therefore, the Court would have to order that the



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respondent be removed from the United States to Honduras.

ORDERS

IT IS ORDERED that the respondent be removed from the United States to Honduras under the charge contained in the Notice to Appear.

***Please see the next page for electronic signature***

JERRY A. BEATMANN, SR.
Immigration Judge

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//s//

Immigration Judge JERRY A. BEATMANN, Sr.

beatmanj on January 14, 2015 at 1:00 PM GMT

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