



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: CHACON, JOSE EULALIO

A 094-474-544

Date of this notice: 11/30/2015

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Leary, Brian M.
Grant, Edward R.
Guendelsberger, John

Userteam: Docket

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Falls Church, Virginia 22041

File: A094 474 544 – Boston, MA

Date:

NOV 30 2015

In re: JOSE EULALIO CHACON a.k.a. Jose Chacon-Tejeda

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kevin MacMurray, Esquire

APPLICATION: Temporary Protective Status; administrative closure

The respondent, a native and citizen of El Salvador, has appealed from the Immigration Judge's January 27, 2014, decision. In that decision, the Immigration Judge pretermitted the respondent's application for Temporary Protective Status ("TPS") (Form I-821).¹ The Department of Homeland Security (the "DHS") has not filed a response to the respondent's appeal. The record will be remanded.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The Immigration Judge deemed the respondent's application abandoned as the respondent did not file a copy of his TPS application by the January 12, 2014, filing deadline set by the Immigration Judge in the February 11, 2013, pre-trial order. *See* 8 C.F.R. § 1003.31(c) (providing that the Immigration Judge may set deadlines for the filing of applications and that if an application is not filed within the time set, the opportunity to file it is deemed waived). In addition, the respondent did not strictly comply with the fingerprint processing requirements as set forth in the regulations. *See* 8 C.F.R. § 8 C.F.R. § 1003.47(d) (providing that the failure to comply with the fingerprint procedure within the time allowed by the Immigration Judge constitutes abandonment of the application).

¹ The record was last before us on appeal from the Immigration Judge's May 27, 2011, decision. In the May 27, 2011, decision, the Immigration Judge determined that the respondent was not eligible for TPS as he had been convicted of two felonies. *See* 8 C.F.R. § 244.4(a) (an alien ineligible for TPS if convicted of any felony or two or more misdemeanors). On appeal from that decision, the respondent presented evidence indicating that his convictions that otherwise disqualified him from eligibility for TPS had been vacated. In an order dated April 23, 2012, we remanded the record to the Immigration Judge as it appeared the respondent was no longer disqualified for TPS. There is no dispute that the respondent's convictions have been vacated and that he is otherwise eligible for TPS, save whether such application should be granted in the exercise of discretion (I.J. at 1; Tr. at 13, 15, 19-20).

However, we understand from the record that in prior proceedings before the Immigration Judge, the respondent had been unable to secure a copy of his TPS application initially filed with United States Citizenship and Immigration Services (the "USCIS"). Moreover, in those prior proceedings on September 21, 2010, the record indicates that the DHS would provide a copy of the initially filed TPS application (Tr. at 8). See *Matter of Rivera*, 25 I&N Dec. 575 (BIA 2011) (providing that the DHS may be required to provide the application filed with the USCIS). We also note some confusion by the parties as to whether the respondent was free to file a new TPS application (Tr. at 14, 17). In this regard, and under similar circumstances presented here, we have held that it is contemplated that the respondent will provide a new or amended TPS application. See *Matter of Figueroa*, 25 I&N Dec. 596, 599 (BIA 2011).

As to the latter issue, the record confirms that the notices, instructions, or consequences for failing to comply with the fingerprint requirements as set forth at 8 C.F.R. § 1003.47(e) were provided to the respondent. However, it is not disputed that the respondent was previously fingerprinted and his fingerprinting was just over 15 months old when they expired January 26, 2014, one day before the January 27, 2014, hearing. On appeal, the respondent's attorney asserts that on January 14, 2014, he scheduled a new fingerprinting appointment for January 26, 2014.²

Considering all the relevant factors in this case including the DHS's failure to provide a copy of the initially filed TPS application, the confusion as to whether the respondent may file a new TPS application, and the respondent's efforts to comply with the fingerprinting requirements, the record will be remanded to the Immigration Judge. On remand, the respondent shall be provided the opportunity for de novo consideration of his TPS application and for any other relief for which the respondent is eligible. In addition, the Immigration Judge shall provide the respondent the opportunity to be fingerprinted anew in accordance with the above referenced regulations and for further proceedings consistent with our prior decision dated April 23, 2012.

Accordingly the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings and the issuance of a new decision.³



FOR THE BOARD

² As the respondent was represented, better practice would have been for counsel to confirm his client's compliance with the regulatory fingerprint requirement prior to the call-up date and hearing and, if necessary, file a request for a continuance with the Immigration Judge prior to the filing call-up date and final hearing.

³ Therefore, we need not reach the several motions filed in conjunction with the appeal at this time.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS**

IN THE MATTER OF:

**Jose Eulalio Chacon
A 094 474 544**

Respondent

) **In Removal Proceedings**
)
)
)

CHARGE: INA § 212(a)(6)(A)(i)
INA § 212(a)(2)(A)(i)(I)

APPLICATIONS: Temporary Protected Status; Voluntary Departure, in the Alternative

ON BEHALF OF RESPONDENT

Kevin MacMurray, Esq.
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ON BEHALF OF DHS

Assistant Chief Counsel
Office of the Chief Counsel
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Boston, MA 02203

ORDER OF THE IMMIGRATION JUDGE

The Respondent's application for Temporary Protected Status (TPS) is pretermitted and denied.

The Respondent appealed the Court's original decision denying relief, and the Board remanded the case to the Court in light of new evidence showing that the Respondent's disqualifying convictions "may have been set aside and that he may have been granted a new trial." (BIA April 23, 2012). The case was remanded to allow the Court to consider whether the Respondent's convictions have been vacated for immigration purposes, his eligibility for TPS and further proceedings consistent with the Board's April 23, 2012, Opinion. *Id.*

On September 11, 2012, following a master calendar hearing during which the Respondent requested another review of USCIS's decision denying TPS, the Court scheduled an individual hearing to take place on February 11, 2013. Although the Respondent had never filed an application for relief (I-821 Temporary Protected Status), the Department of Homeland Security stipulated that, despite one remaining misdemeanor conviction, the Respondent was eligible for such relief as of that date. The case was then continued to March 12, 2014, for a

merits hearing on the application. The Respondent was told that his call up date was January 12, 2014, and was warned that if his application(s) were not filed on or before January 12, 2014, they would be deemed abandoned. Additionally, the Respondent was provided with a Pre-Trial Order also directing the Respondent to comply with the Order and file any and all applications for relief on or before January 12, 2014. The Pre-Trial Order also requires proof be submitted by the call-up date that biometrics were taken on or before January 12, 2014. The written Order, like the Court's in-court instructions to the Respondent, warn that failure to comply with the Pre-Trial Order may result in an application for relief being abandoned, among other potential consequences.

Legal Standard

Immigration Judges have the authority to set filing deadlines for applications and related documents. See 8 C.F.R. § 1003.31(c). Applications for benefits under the Immigration and Nationality Act are properly denied as abandoned when an alien fails to timely file them. See Matter of R-R-, 20 I&N Dec. 547, 549 (BIA 1992). If, however, supporting documents are not submitted within the time established, but the application for relief has been timely filed, the Immigration Judge may deem the opportunity to file those documents waived, but may not deem the application abandoned. *See Matter of Interiano-Rosa*, 25 I&N Dec. 264 (BIA 2010). *See also Moreta v. Holder*, 723 F.3d 31 (1st Cir. 2013), *citing Gomez-Medina v. Holder*, 687 F.3d 33, 37 (1st Cir. 2012) (The regulations governing removal proceedings invest IJs with "broad authority to impose deadlines for court filings. This authority reflects the government's strong interest in the orderly and expeditious management of immigration cases." (citations and internal quotation marks omitted)).

Similarly, failure to comply with requirements to provide biometrics and other biographical information within the time allowed by the Court's order constitutes abandonment of the application for relief. 8 CFR § 1003.47 (c) (2007). The Court may then enter an order dismissing the application for relief, unless the applicant demonstrates that such failure was the result of good cause. *Gomez-Medina v. Holder*, 687 F.3d at 37, *citing* § 1003.47(c).

Analysis

As of the date of this Order, January 27, 2014, the Respondent has failed to submit any application for relief from removal, or affidavit, demonstrate that biometrics have been taken, or otherwise comply with the Pre-Trial Order issued to the Respondent on February 11, 2013. The one-page legal memorandum addressing his eligibility for TPS, filed with the Court in December 2012, prior to the Pre-Trial Order, is insufficient.

Because the Respondent has failed to comply with the February 11, 2013, deadline set by the Court, has not filed a motion to enlarge the time for filing his application(s), affidavit(s) and/or evidence, nor demonstrated that he is eligible for any other form of relief, or that his biometrics are current, and because the Respondent has not filed a motion to continue the hearing, or demonstrated good cause for failing to comply with the Court's Pre-Trial Order, the Court deems any and all applications to be abandoned.

ORDER

IT IS HEREBY ORDERED that the Respondent's Applications for Relief from Removal be **DENIED**.

The Respondent is ordered removed to El Salvador.

Any appeal of this Order must be filed with the Board of Immigration Appeals on or before thirty days from the date of this Order.

Date

1/27/14


ROBIN E. FEDER

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