



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: C [REDACTED] -G [REDACTED], G [REDACTED] ... A [REDACTED] -283

Date of this notice: 5/20/2019

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:
Cole, Patricia A.

U.S. I.R.
User team: Docket

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Falls Church, Virginia 22041

File: A-283 – Las Vegas, Nevada

Date: MAY 20 2019

In re: G-W-C-G

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Hardeep Sull, Esquire

APPLICATION: Reopening

The respondent is a native and citizen of Guatemala who appeals from a December 6, 2018, Immigration Judge finding him removable as charged and concluding that he abandoned his applications for relief.¹ We will remand for further proceedings.

We review findings of fact determined by an Immigration Judge, including credibility findings and predictions as to the likelihood of future events, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i) (2018). 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).

Under 8 C.F.R. § 1003.31(c), an Immigration Judge may set and extend time limits for the filing of applications, related documents, and any responses thereto (if any). “If an application or document is not filed within the time set the Immigration Judge, the opportunity to file that application or documents shall be deemed waived.” *Id.* Here, the respondent’s counsel appeared before the Immigration Judge on October 18, 2018 (the respondent did not appear due to technical difficulties with the televideo) (Tr. at 1). At the October 18, 2018, hearing the Immigration Judge ordered and the respondent’s counsel acknowledged that pleadings and applications for relief should be filed at the December 6, 2018, hearing, otherwise any applications would be deemed abandoned (*Id.* at 3-4). Another attorney appeared at the request of the respondent’s counsel on December 6, 2018, and was unaware that the respondent was supposed to file his applications that day. The Immigration Judge deemed the applications abandoned (*Id.* at 7-9).

On appeal, the respondent’s counsel admits that she forgot the Immigration Judge implemented a filing deadline for the respondent’s applications for relief, and did not inform the respondent of the deadline (Respondent’s Motion at 4-8, 11; Respondent’s Motion at Exhs. 3, 4). She timely asks that we reopen proceedings and remand the record in order for the respondent to apply for cancellation of removal and asylum. Section 240(c)(7)(C)(i) of the Act, 8 U.S.C. § 1229a(c)(7)(C)(i) (A respondent may file one motion to reopen proceedings within 90 days of a final order); 8 C.F.R. § 1003.2(c)(2) (same).

¹ Although the Immigration Judge’s decision indicates that he also was denying the respondent’s application for voluntary departure, the record does not indicate that the respondent requested this form of relief (Tr. at 1-11).

Ineffective assistance of counsel may warrant reopening of removal proceedings. See *Correa-Rivera v. Holder*, 706 F.3d 1128, 1130-31 (9th Cir. 2013). The respondent does not fully comply with the requirements of *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988). However, as noted, the respondent's counsel readily admits her error that prevented the respondent from presenting his claims for relief. Strict compliance with *Lozada* is not required where the ineffective assistance is "plain on the face of the administrative record." *Reyes v. Ashcroft*, 358 F.3d 592, 597 (9th Cir. 2004) (internal citation omitted).

The respondent's counsel's admitted ineffectiveness prevented the respondent from filing his applications for relief from removal and reasonably presenting his case. We conclude that the counsel's failure to remember the filing deadline and inform the respondent of the filing deadline constitute a "clear and obvious" case of ineffective assistance that is "plain on the face of the administrative record." *Reyes v. Ashcroft*, 358 F.3d at 597; *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1226-27 (9th Cir. 2002). Thus, we will reopen proceedings and remand the record in order for the respondent to apply for any forms of relief for which he may be eligible. Because we are granting the respondent's motion, we will not address the respondent's other arguments or otherwise consider the documents filed with his motion.

Accordingly, the following order will be issued.

ORDER: The proceedings are reopened, and the record is remanded for further proceedings consistent with this order and for the entry of a new decision.



FOR THE BOARD