



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: A [REDACTED], R [REDACTED] A [REDACTED]

A [REDACTED]-886

Date of this notice: 1/16/2020

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:
Wendtland, Linda S.

USCIS
User team: Docket

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RC

Falls Church, Virginia 22041

File: A-886 – Baltimore, MD

Date: **JAN 16 2020**

In re: R- A- A-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Danielle LC Beach-Oswald, Esquire

APPLICATION: Asylum

The respondent, a native and citizen of Honduras, appeals the April 6, 2018, decision of the Immigration Judge, denying his application for asylum as untimely and not excused, but granting his application for withholding of removal. Sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). The Department of Homeland Security (DHS) has not responded to the appeal. The appeal will be sustained on the basis of intervening legal authority, the respondent will be found eligible for asylum on this record, and the record will be remanded for the requisite background checks.

The Immigration Judge found that the respondent had entered the United States in July 2014 but had not filed his application until April 2016 (IJ at 11). The Immigration Judge found the delay was not excused by a changed or extraordinary circumstance (IJ at 10-12). On appeal, the respondent argues only that he is a class member under *Mendez Rojas v. Johnson*, 305 F. Supp.3d 1176 (W.D. Wash. 2018), such that his application should be treated as timely filed (Respondent's Br.). We agree.

The respondent entered the United States in 2014, and was eventually found to have a credible fear after an Immigration Judge vacated the first decision and returned it to the DHS (IJ at 11). The record does not contain evidence that the respondent was alerted to the need to file his asylum application within 1 year. The respondent appears to be a class member of Class A(II)(b). Accordingly, we treat his application as timely filed. *Mendez Rojas v. Johnson*, 305 F. Supp.3d at 1188. As the only reason asylum was denied was due to timeliness, and that barrier no longer remains, we will find eligibility for asylum subject to background checks.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the DHS the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD