



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: M [REDACTED] J [REDACTED] M [REDACTED]
Riders: [REDACTED]-523

A [REDACTED]-522

Date of this notice: 3/15/2017

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

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Kendall Clark, Molly
Liebowitz, Ellen C
Guendelsberger, John

Userteam: Docket

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Falls Church, Virginia 22041

Files: A [REDACTED] 522 – Los Angeles, CA
A [REDACTED] 523

Date: MAR 15 2017

In re: M [REDACTED] M [REDACTED] J [REDACTED]
M [REDACTED] M [REDACTED] J [REDACTED]

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENTS: Christina Marie Von der Ahe, Esquire

The respondents have filed an interlocutory appeal from the Immigration Judge's November 3, 2016, written decision granting the Department of Homeland Security's ("DHS's") motion for change of venue. The DHS has not filed a response to the appeal. The Notice to Appear was filed in Los Angeles, California on October 27, 2015. The Immigration Judge subsequently granted the DHS's oral motion to change venue to the hearing office in Tucson, Arizona, near the respondents' point of entry.

To avoid piecemeal review of the multiple queries that may arise during the course of removal proceedings, the Board generally does not entertain interlocutory appeals. *See Matter of M-D-*, 24 I&N Dec. 138, 139 (BIA 2007), and cases cited therein. We have, on occasion, accepted interlocutory appeals to address significant jurisdictional questions about the administration of the immigration laws, or to correct recurring problems in the handling of cases by Immigration Judges. *See, e.g., Matter of Guevara*, 20 I&N Dec. 238 (BIA 1990, 1991); *Matter of Dobere*, 20 I&N Dec. 188 (BIA 1990).

We find it appropriate to exercise our jurisdiction over this case and address the merits of this appeal. In making her determination, it does not appear that the Immigration Judge weighed all of the relevant factors in finding that the DHS established good cause for a continuance. *See Matter of Rahman*, 20 I&N Dec. 480 (BIA 1992). Considering the totality of the circumstances, we determine that the Immigration Judge's decision to change venue should be vacated. Accordingly, the interlocutory appeal will be sustained and venue transferred back to the Los Angeles, California, Immigration Court.

ORDER: The interlocutory appeal is sustained, and Immigration Judge's November 3, 2016, decision is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court in Los Angeles for further proceedings.

Molly Kendall Clay
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File No.: A [REDACTED] 522)
A [REDACTED] 523)
In the Matters of:)
M [REDACTED] J [REDACTED]) IN REMOVAL PROCEEDINGS
M [REDACTED])
M [REDACTED] J [REDACTED])
M [REDACTED])
Respondents)
CHARGE: Immigration and Nationality Act (INA) Section 212(a)(7)(A)(i)—*not in possession of a valid unexpired immigration visa or other valid entry document at time of application for admission*
APPLICATION: DHS' Motion to Change Venue

ON BEHALF OF RESPONDENTS:
Immigrant Defenders Law Center
634 South Spring Street, Third Floor
Los Angeles, California 90014

ON BEHALF OF DHS:
Malgorzata Gasior, Esq.
Assistant Chief Counsel
U.S. Department of Homeland Security
606 South Olive Street, Eighth Floor
Los Angeles, California 90014

DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

M [REDACTED] M [REDACTED] J [REDACTED] and M [REDACTED] M [REDACTED] J [REDACTED] (Respondents) are natives and citizens of Guatemala. M [REDACTED] and M [REDACTED] are siblings. M [REDACTED] is fifteen years old and M [REDACTED] is fourteen years old. On August 8, 2015, the U.S. Department of Homeland Security (DHS) personally served Respondents, who were identified as unaccompanied alien children at the time, with a Notice to Appear (NTA).¹ See Form I-862 of M [REDACTED] M [REDACTED] J [REDACTED], Form I-862 of M [REDACTED] M [REDACTED] J [REDACTED]. In each NTA, DHS alleged that on or about August 8, 2015, Respondents applied for admission into the United States at the Morley Gate Port of Entry in Nogales, Arizona, and Respondents are immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the INA. *Id.* Accordingly, DHS

¹ The Court notes that Respondents deny being properly served with the NTA. The Court makes no ruling on these allegations at this stage. The documents in the record are presumed to be true for the present purpose of indicating procedural history only.

charged Respondents with inadmissibility pursuant to INA § 212(a)(7)(A)(i). *Id.* Jurisdiction vested and removal proceedings commenced when DHS filed the NTAs with the Court on October 27, 2015. *See* 8 C.F.R. § 1003.14(a) (2015).

On July 28, 2016, Respondents each filed a motion to suppress evidence and terminate their case. Respondents alleged that the NTAs had not been served on their father as required under *Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir. 2004). M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 21–22; M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 25–26. As a result, Respondents contend that the Court lacks jurisdiction and that their due process rights would be violated if their proceedings are not terminated. *Id.* at 22–24; 27–29.

On August 1, 2016, DHS made an oral motion to change venue back to an Immigration Court in Arizona on the ground that all evidence relevant to Respondents' allegations of malfeasance by DHS employees was located in Arizona. The Court provided Respondents with thirty days to respond. *See* 8 C.F.R. § 1003.20(b) (requiring opposing party to be “given notice and an opportunity to respond to the motion to change venue”). On August 19, 2016, Respondents filed an opposition. On August 22, 2016, Respondents' counsel filed a motion to withdraw as counsel of record, which the Court has granted.

For the following reasons, the Court will grant DHS's motion to change venue.

II. Law and Analysis

An immigration judge may change venue for good cause upon a motion by one of the parties. 8 C.F.R. § 1003.20(b). Good cause is assessed by balancing relevant factors, including administrative convenience, expeditious treatment of the case, location of the witnesses, costs of transporting witnesses or evidence, and factors commonly associated with the alien's place of residence. *See Matter of Rahman*, 20 I&N Dec. 480, 482–83 (BIA 1992); *Matter of Velasquez*, 19 I&N Dec. 377, 382–83 (BIA 1986).

The Court finds that the balance of factors favors changing venue to Arizona. Administrative convenience does not weigh against changing venue. The Court has held only four hearings in this case, none of which were individual merits hearings. Respondents have not even entered pleadings on the allegations in the NTAs. As such, the Court has no special familiarity with this case that will be difficult for the Immigration Court in Arizona to achieve.

All of the relevant witnesses in this case are located in Arizona. Respondents assert that DHS employees in Arizona made them sign documents they did not understand, and that they have not been given copies of these documents. M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 2, 24; M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 3, 24–25. M further alleges the certificate of service for her NTA is completely deficient because the certificate was not filled out or signed at all. M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 24. They also deny giving any information that is on their Form 1-213, Record of Deportable/Inadmissible Alien (Form I-213), to DHS officers. M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 14–20; M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 15–21. All of the employees whose actions or failures to act are pivotal to Respondents' motion to

suppress evidence and terminate are in Arizona. If Respondents' allegations are believed, DHS would be required to call all the officers or employees who were involved in the service of the NTAs and the authentication of the Form I-213s to testify. See M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 1–2; M [REDACTED] M [REDACTED] J [REDACTED] Mot. To Suppress and Terminate at 1–2. Moreover, any evidence relating to the allegedly incorrect and inaccurate Form I-213s would presumably also be found in Arizona. As such, this factor weighs strongly in favor of changing venue.

Respondents argue that the added cost of conducting hearings in Los Angeles is avoidable because the witnesses can be interviewed telephonically or by video. Resp'ts' Opp. at 6. However, it is quite likely that this case may hinge on the credibility of DHS' witnesses, given the serious allegations of wrongdoing leveled by Respondents. As such, live, in-person testimony is greatly preferred, as it will make the credibility determination easier and likely more accurate. DHS is not required to present evidence in the manner most favorable or convenient to Respondents; like Respondents, they have the right to present evidence in the way they find to be most effective. Therefore, the significant costs of flying witnesses from Arizona to California weigh in favor of changing venue.

Finally, the factors associated with the aliens' place of residence weigh against changing venue. Respondents reside in Los Angeles, and currently have counsel in Los Angeles. Resp'ts' Opp. at 5–7. Further, their counsel avers that the Immigrant Defenders Law Center will not be able to represent Respondents in Arizona and that Respondents cannot afford to pay for counsel to represent them. *Id.* at 6–7. As such, Respondents must either obtain new pro bono counsel in Arizona or be forced to represent themselves. *Id.* The Court understands that traveling across the country will be difficult for Respondents and that they have developed a rapport with their counsel. However, on August 22, 2016, Respondents' counsel filed a motion to withdraw as counsel of record, which the Court has granted. Consequently, Respondents will be assigned a new attorney from the Immigrant Defenders Law Center, with whom they would not have developed any rapport. See Resp'ts' Mot. to Withdraw as Counsel of Record at 3. Further, the Court does not believe that it will be impossible for Respondents to find pro bono counsel in Arizona.

In considering all the factors and all evidence submitted by both parties, the Court concludes that the inconvenience to Respondents of returning to Arizona is outweighed by the fact that all of the witnesses and evidence are located there. The Court finds it appropriate to transfer this case back to Arizona to develop the record as necessary, and rule on Respondents' removability. If Respondents' removability is established, the Court will consider any applications for relief that Respondents may seek.

Accordingly, the following orders shall be entered:

ORDERS

IT IS HEREBY ORDERED that DHS' motion to change venue to Arizona be GRANTED.

IT IS FURTHER ORDERED that these proceedings be transferred to an Immigration Court in Arizona.

DATE: 11/03/2010

J. Traci Hong (Tracy Ewell)
J. Traci Hong
Immigration Judge

CERTIFICATE OF SERVICE	
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DATE: 11/14/10 BY: COURT STAFF <i>(initials)</i>	
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