



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: BENITEZ MARIN, ALEJANDRO

A 205-495-241

Date of this notice: 8/31/2018

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:
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A205 495 241 – Newark, NJ

Date:

AUG 31 2018

In re: Alejandro BENITEZ MARIN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Aneliya M. Angelova, Esquire

ON BEHALF OF DHS: Margo Strauss
Assistant Chief Counsel

APPLICATION: Termination of proceedings

ORDER:

The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision dated September 25, 2017, which granted the respondent's motion to terminate removal proceedings. The parties have provided arguments on appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We will affirm the Immigration Judge's decision. The record shows that the respondent, a native and citizen of Mexico, has an approved Form I-130, Petition for Alien Relative, filed on his behalf by his United States citizen spouse, as well as an approved Form I-601A, Provisional Unlawful Presence Waiver (IJ at 2; Exh. 3). The respondent moved to terminate proceedings so that he may leave the country to pursue consular processing (IJ at 2; Tr. at 25-27). *See* 8 C.F.R. § 212.7(e)(12). On the record, counsel for the DHS did not offer any objection to termination of proceedings or accept the Immigration Judge's offer to continue proceedings to obtain the administrative file; rather, counsel indicated that she would reserve appeal if the Immigration Judge issued a decision terminating proceedings (IJ at 2; Tr. at 28-30). The arguments raised on appeal, which could have been but were not raised before the Immigration Judge, are waived. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190 (BIA 2018); *Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003). In addition, we find that the DHS's reference to the intervening decision in *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), which relates to the Immigration Judge's authority to administratively close proceedings, is not applicable here. Accordingly, the appeal is dismissed.



FOR THE BOARD

Cite as: Alejandro Benitez Marin, A205 495 241 (BIA Aug. 31, 2018)