



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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Name: R [REDACTED]-L [REDACTED], A [REDACTED] M [REDACTED] A [REDACTED]-473

Date of this notice: 4/10/2018

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:
Grant, Edward R.
Guendelsberger, John
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 473 – Miami, FL

Date:

APR 10 2018

In re: A [REDACTED] M [REDACTED] L [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David Novoa, Esquire

APPLICATION: Reopening

The respondent is a 19-year-old female native and citizen of Guatemala. She appeals from an Immigration Judge's October 2, 2017, decision denying a motion to reopen. The respondent filed a brief concerning the Immigration Judge's decision, while the Department of Homeland Security (the "DHS") did not submit a brief. The case will be remanded to the Immigration Court.

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).

The Immigration Judge on August 1, 2017, found that the respondent had abandoned her applications for asylum and related relief or protection, due to her failure to file such applications on or before the July 28, 2017, deadline set by the judge. *See* sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1003.31(c); 1208.16 – 1208.18. The respondent was ordered removed to Guatemala. The respondent filed a motion to reopen with the Immigration Judge, which was denied on October 2, 2017.

We have considered the totality of the circumstances presented by this case. Significantly, when the DHS, U.S. Citizenship and Immigration Services (USCIS) found that the respondent did not establish eligibility for asylum, and referred the case back to the Immigration Court, USCIS specifically said that the respondent could seek asylum before the Immigration Judge without filing another application. *See* 8 C.F.R. § 208.14(c)(1) (asylum officer is to refer application to Immigration Judge). Instead, USCIS did not send the asylum application to the Immigration Judge. We have also taken into account the respondent's young age, and previous status as an unaccompanied alien child. The appeal is sustained, and the case will be remanded to the Immigration Judge to allow the respondent an opportunity to apply for any relief for which she may be eligible, and for the entry of a new decision.

ORDER: The case is remanded to the Immigration Court for further proceedings consistent with this opinion, and the entry of a new decision.



FOR THE BOARD

U.S. Department of Justice
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
333 SOUTH MIAMI AVENUE
MIAMI, FLORIDA 33130-1904

In the Matter of:

File No. [REDACTED] 473

[REDACTED] M [REDACTED] R [REDACTED] - M [REDACTED]
Respondent

In Removal Proceedings

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of respondent's Motion to Reopen Removal Proceedings to Apply for Asylum, Withholding, CAT and V.D., it is HEREBY ORDERED that the motion be
☐ GRANTED ☒ DENIED because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the Court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☒ Other: The court does not find good cause or due diligence to warrant reopening of this case.

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

OCT. 2, 2017
Date

J. Daniel Dowell
J/ DANIEL DOWELL
Immigration Judge

Certificate of Service

This document was served by: ☒ Mail ☐ Personal Service
To ☒ Alien ☐ Alien c/o Custodial Officer ☒ Alien's Atty/Rep ☒ DHS

Date: 10/2/17

By: Court Staff LA

CC: Daniel Navea, Esq.
Andrea Fialice, ICE Counsel