



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: M [REDACTED]-G [REDACTED], J [REDACTED] J...

A [REDACTED]-629

Date of this notice: 9/26/2019

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:
Greer, Anne J.
Wendtland, Linda S.
Cole, Patricia A.**

**1
User team: Docket**

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RC

Falls Church, Virginia 22041

File: A [REDACTED]-629 – Oakdale, LA

Date:

SEP 26 2019

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Homero Lopez, Jr., Esquire

The respondent, a native and citizen of Honduras, timely appeals an Immigration Judge's April 10, 2019, decision finding the respondent to be removable as charged, and, in the absence of any applications for relief from removal, ordering the respondent removed. At the conclusion of his hearing, the respondent waived his right to appeal. On May 9, 2019, the respondent nevertheless filed a Notice of Appeal.

We do not have jurisdiction over the decision of an Immigration Judge once the parties waive their right to appeal. *Matter of Shih*, 20 I&N Dec. 697 (BIA 1993). Whenever the right to appeal is waived, the decision of the Immigration Judge becomes final and may be implemented immediately. See 8 C.F.R. §§ 1003.3(a)(1), 1003.39. However, the Board retains jurisdiction to consider an appeal concerning the validity of an appeal waiver itself, including whether the waiver was knowingly and intelligently made. See, e.g., *Matter of Patino*, 23 I&N Dec. 74 (BIA 2001). We determine that, due to questions regarding the respondent's mental competency, and thus whether his waiver was knowing and voluntary, we have jurisdiction over the respondent's appeal, and thus we will consider it.

The respondent in this case is deaf and mute, and his inability to meaningfully communicate with immigration officials has been a persistent issue. Notably, the respondent was initially detained by United States immigration officials at the United States/Mexico border along with his sister, who apparently served as a translator for him, although how she did so is unclear, and subsequent efforts by Department of Homeland Security officers to locate her to assist the respondent have been unsuccessful (Tr. at 10, 14-15, 17-18). In light of the communication issue, counsel for the DHS stated that DHS officials were pursuing "the route of maybe potentially a mental competency evaluation," and asked the Immigration Judge for a continuance, which was granted (Tr. at 10). At a subsequent hearing, counsel for the DHS made an oral motion to change venue to the Oakdale Immigration Court, noting that the respondent had recently been moved to a new correctional facility "where he will be able to receive a mental health evaluation and services we'll be able to assess [sic] for him there" (Tr. at 20).

At the respondent's next hearing in the new immigration court, the respondent was provided a sign language translator, who translated for the respondent (Tr. at 21-22). It does not appear that the Immigration Judge was aware of the mental competency concerns expressed during prior proceedings in a different immigration court. Indeed, he explicitly stated "I have no prior knowledge of your case and I shall base my decision solely upon what I hear inside this courtroom" (Tr. at 25). On appeal, the respondent, through counsel, asserts that many of the respondent's answers in response to questioning by the Immigration Judge were "nonresponsive and

nonsensical,” thus showing indicia of incompetency (Respondent’s Br. at 6-14). As conceded by the respondent’s counsel, it is unclear whether the “nonresponsive and nonsensical” nature of such answers were due to: (1) a cognitive deficit; (2) an inability to properly sign, as the respondent was shackled during the hearing; (3) a lack of full and complete translation of the Immigration Judge’s words to the respondent; or (4) a lack of proficiency in American Sign Language and Honduran Sign Language by the translator (Respondent’s Br. at 12). Given these concerns, we agree that a competency evaluation is needed to determine whether the respondent is mentally competent to meaningfully participate in removal proceedings.

On remand, the Immigration Judge should consider whether the respondent was competent to participate in the hearing under the framework set out in *Matter of M-A-M-*, 25 I&N Dec. 474, 479 (BIA 2011), as well as take any other appropriate action. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded for further proceedings in accordance with this decision.



FOR THE BOARD