



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Atlanta, GA 30303**

Name: RAMIREZ, TOMAS

A 026-843-980

Date of this notice: 7/31/2014

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:
Donovan, Teresa L.
Pauley, Roger
Wendtland, Linda S.

lucasd

Userteam: Docket

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SC

Falls Church, Virginia 20530

File: A026 843 980 - Atlanta, GA

Date: JUL 31 2014

In re: TOMAS RAMIREZ a.k.a Tomas Ramirez Miranda a.k.a. Thomas Fransisco

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Chung H. Lee, Esquire

ON BEHALF OF DHS: Nichole Lillibridge
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Remand; adjustment of status

The respondent is a native and citizen of Mexico. He appeals from a March 15, 2012, Immigration Judge decision declining to accept late-filed documents and deeming abandoned his I-601 form for waiver of inadmissibility and I-485 application for adjustment of status. The Immigration Judge pointed out that, despite a specific warning that the failure to timely file documents would be considered an abandonment of his applications, the respondent did not meet the court-ordered deadlines. We will remand the record for further proceedings.

The respondent entered the United States without inspection on an unknown date. The respondent filed an I-485 application for adjustment of status on November 13, 2006. Because of the filing date, the respondent's claims are governed by the amendments to the Act brought about by the passage of the REAL ID Act of 2005. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). On October 15, 2009, the United States Citizenship and Immigration Services ("USCIS") denied the respondent's application because he had failed to provide requested and required evidence of eligibility. Specifically, USCIS had requested evidence from the respondent on August 29, 2007, and May 24, 2009, in the form of proof that he had paid all fines and completed all terms of probation related to his arrests for driving under the influence ("DUI") on September 24, 1988, April 17, 1990, December 8, 1992, and April 30, 1997 (Exh. 4 at Tab A; Tr. at 2). On January 14, 2010, the respondent was issued a Notice to Appear for removal proceedings (Exh. 1). On appeal of the removal order entered in March 2012, the respondent argues that the Immigration Judge violated his due process rights by not accepting his documents into the record and by deeming his relief applications abandoned. The respondent also submits numerous documents on appeal and asks that we remand the record.

During the proceedings below, the Immigration Judge told the respondent that he would need to give his attorney the needed documents so that they could be timely filed. The Immigration Judge informed the respondent that the documents would not be accepted late and that an

untimely submission would cause any application to be considered abandoned (Tr. at 4). In addition, the Immigration Judge issued a written pre-trial order informing the respondent that he had 30 days from the date of the April 1, 2010, order, to provide proof that his application had been filed with USCIS, and had until 30 days before the date of the hearing to file the application and supporting documents with the court in order to avoid his applications being considered abandoned (Exh. 3). *See* 8 C.F.R. § 1003.21(b).

On August 25, 2011, the Immigration Judge accepted into evidence without objection the Department of Homeland Security's¹¹ ("DHS") copies of the I-485 denial letter and the respondent's 2006 adjustment of status application and supporting documents, which DHS had initially filed with the Immigration Court in November 2010 (Tr. at 7; Exh. 4). On March 9, 2012, the respondent moved to continue proceedings, asserting that he had not been able to obtain or provide any of the requested additional documents (Tr. at 12; Exh. 5), which motion the Immigration Judge denied. At the subsequent hearing on March 15, 2012, the Immigration Judge pointed out that the respondent's assertion that DHS had not submitted copies of the old application and denial letter was incorrect because DHS had filed them in November 2010 and they were accepted into evidence in August 2011 (Tr. at 12-15). The Immigration Judge also pointed out that it was the respondent's burden and not DHS's to provide evidence regarding the DUI convictions (Tr. at 13-14). The respondent's counsel attempted to proffer all the requested documents at the hearing, asserting that the respondent only had given him the documents a few days before. The respondent admitted that he had not provided his attorney with the necessary documents until 3 days previously (Tr. at 12-13, 16-17, 21; I.J. at 2). The Immigration Judge then deemed the respondent's applications abandoned because he had failed to follow the Immigration Judge's orders regarding timely submission of documents (Tr. at 21; I.J. at 2-3).

We are not persuaded by the respondent's argument that the Immigration Judge violated his right to due process by declining to accept his late-filed documents. Specifically, the respondent had been on notice since 2007 that USCIS needed documents related to his DUI convictions, and he had had since April 2010 to submit those and other documents to the Immigration Judge. The respondent provided no reasonable explanation for his failure to follow the Immigration Judge's orders or for his untimely submission of the requested documents for the proceedings. Thus, the Immigration Judge's decision to decline to accept the late-filed documents was proper. 8 C.F.R. § 1003.31(c). This did not constitute a due process violation or undermine the fundamental fairness of the proceedings because the respondent had years to submit the requested materials and no adequate excuse for not timely providing them. *Matter of G-*, 20 I&N Dec. 764, 780-81 (BIA 1993); *see also Matter of Interiano-Rosa*, 25 I&N Dec. 264, 266 (BIA 2010).

Nevertheless, we will remand the record in order for the Immigration Judge to adjudicate the respondent's applications for relief. The Board has concluded in a precedential decision that when an application for relief is timely filed but the supporting documents are not filed within the ordered time frame, then an Immigration Judge may deem the opportunity to file the supporting documents waived, but may not deem the application itself abandoned. *Matter of Interiano-Rosa*, *supra*, at 266. As discussed above, the Immigration Judge properly declined to accept the respondent's late-filed supplementary documents. But instead of deeming abandoned the respondent's applications for adjustment of status and waiver of inadmissibility, the Immigration Judge should have determined what effect the respondent's failure to submit the requested documents had on his ability to meet his burden of proof and whether he merits relief

in the exercise of discretion. *Id.* The respondent should have been allowed to have a merits hearing on at least the applications and documents that were timely submitted. *Id.* Thus, we will remand the record for further proceedings on the merits of the respondent's already-filed applications for relief. We reach no conclusions regarding the respondent's eligibility for relief. The Immigration Judge has discretion on remand to decide whether to consider the respondent's untimely documents.

Finally, we note that the respondent submitted numerous documents on appeal. The respondent also asks that, in view of these documents, we remand the proceedings in order for him to have a hearing before the Immigration Judge on the merits of his applications for relief. We already are remanding for a hearing, but conclude that the Immigration Judge has discretion as to whether to consider these additional documents on remand. We thus need not further address the merits of the respondent's remand request.

Accordingly, the following order will be issued:

ORDER: The record is remanded for further proceedings consistent with this order, and for the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

File: A026-843-980

March 15, 2012

In the Matter of

TOMAS RAMIREZ

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) - in that the respondent is an alien present in the United States without having been admitted or paroled, who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Application under 245(a).

ON BEHALF OF RESPONDENT: NICOLE S. LILLIBRIDGE

ON BEHALF OF DHS: CHUNG H. LEE

ORAL DECISION OF THE IMMIGRATION JUDGE

This matter comes to the Court on a Notice to Appear dated January 14, 2010. The respondent was placed in proceedings and at a master calendar hearing held on April 1, 2010, allegations 1 through 5 were admitted and the respondent conceded the charge under 212(a)(6)(A)(i). In Exhibit 2, the

respondent entered written pleadings, mirroring these same pleadings, the oral pleadings. And at that same hearing, April 1, 2010, the Court ordered the respondent to submit an application to the CIS and provide evidence that the application had been filed with the CIS, pre-paid. He had 30 days to do so. The application and all supporting documents were also due within 30 days prior to the date of the merits hearing. And the Court specifically ordered that the failure to file timely would be deemed an abandonment for relief. That was marked Exhibit 3. Exhibit 4 was the DHS filing of the documents that existed in their file regarding the respondent's 485, the 485(a), receipt numbers and all supporting documents that were in the DHS file. On March 9, the respondent submitted a motion for continuance of the individual hearing for today's date which was denied. That motion indicated that the respondent had not been able to obtain the copies of the 485, and 485(a), and receipt that establish that he had in fact had filed his documents timely, in spite of the fact that Exhibit 4 has been in the record since November 18, 2010.

On today's date, the respondent enters the court with a 143 page document intending to file applications for relief in the form of I-601 and also the documentation in support of the 485. The Court was advised by respondent's counsel that it was not until about three days ago that the respondent tendered these documents to counsel and respondent was asked about the

same thing. He indicated that is in fact correct. The Court will not tolerate the respondent ignoring the Court's orders and this case has been pending since February 2010. The respondent has had more than enough time to provide the documentation that was required of him. There were two deadlines at least that he has missed and one being the Court's order of April 1, 2010. He had up to May 1, 2010, to file evidence of any applications for relief being tendered with CIS and fees paid. And also 30 days prior to today's date, the respondent was ordered to provide all applications and supporting documents for consideration on today's date. Those documents were being presented today. The Court will refuse to accept those documents as untimely and has deemed all applications abandoned, and therefore is denying all applications. The respondent has indicated in his written pleadings and in open court that he is in fact a native and citizen of Mexico. Since the Court has deemed all applications abandoned and therefore denied, the respondent will be ordered removed to Mexico on the charges contained in the Notice to Appear dated January 14, 2010.

Appeal will be reserved for the respondent. He will have up to and including April 16, 2012, to tender an appeal to the Board of Immigration Appeals. Therefore, the Court will enter the following order:

ORDERS

IT IS HEREBY ORDERED that all applications for relief are hereby upon deemed abandoned and denied. The respondent is ordered removed to Mexico on today's date, March 15, 2012.

March 15, 2012



MADELINE GARCIA
Immigration Judge

Immigrant & Refugee Appellate Center | www.irac.net

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE
MADELINE GARCIA, in the matter of:

TOMAS RAMIREZ

A026-843-980

ATLANTA, GEORGIA

is an accurate, verbatim transcript of the recording as provided
by the Executive Office for Immigration Review and that this is
the original transcript thereof for the file of the Executive
Office for Immigration Review.

Cheryl A. Mance

CHERYL A. MANCE (Transcriber)

DEPOSITION SERVICES, Inc.

MAY 7, 2012

(Completion Date)