U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: MELKONYAN, ANAHIT

A 075-741-482

Date of this notice: 6/21/2017

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

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Creppy, Michael J.
Mullane, Hugh G.
Liebowitz, Ellen C

Userteam: Docket

File: A075 741 482 – Los Angeles, CA Date: JUN 21 2017

In re: ANAHIT MELKONYAN a.k.a. Anait Khachadurian

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sanjay Sobti, Esquire

ON BEHALF OF DHS: Erica Zieschang
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] – Fraud or willful misrepresentation of material fact

APPLICATION: Reinstatement of proceedings

The Department of Homeland Security ("DHS") appeals the Immigration Judge's decision dated September 15, 2016, terminating the respondent's removal proceedings as improvidently begun. The respondent, a native and citizen of Armenia, filed a brief in response to the DHS's appeal in which she requested affirmance of the Immigration Judge's decision terminating her removal proceedings. The DHS's appeal will be sustained. These removal proceedings will be reinstated, and the record will be remanded for further proceedings.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

In her decision, the Immigration Judge made the following factual findings, which we conclude are not clearly erroneous. The DHS issued a Notice to Appear (Form I-862) (NTA) commencing removal proceedings against the respondent on November 18, 2013 (I.J. at 1; Exh. 1). The DHS submitted evidence establishing prior removal proceedings and a prior order of removal dated May 19, 2000 (I.J. at 1; Exh. 3 at 12-15). On September 14, 2016, the DHS confirmed the May 19, 2000, order of removal was never executed (I.J. at 1; Tr. at 91-92).

The Immigration Judge concluded that, since there was an outstanding order of removal in the case, proceedings on a new case would not resolve the case because the outstanding removal order remained in effect, regardless of the court's ruling in the present case (I.J. at 1). She further noted that judicial economy was not promoted for her to proceed on a case when there was already an outstanding order of removal that was not vacated by the issuance of a NTA (I.J. at 1). Thus, she terminated the respondent's current removal proceedings (I.J. at 1).

On appeal, the DHS argues the Immigration Judge's sua sponte termination of the respondent's removal proceedings was improper where the respondent conceded she was removable as charged in the present NTA (DHS's Br. at 6-9). The DHS asserts the Immigration Judge's authority to terminate removal proceedings is limited by regulation to a few narrow circumstances, which are not applicable to the present case (I.J. at 6-7). It further asserts that nothing in the Act or applicable regulations mandates the DHS to take a particular course of action against an alien who has a prior order of removal, and that an Immigration Judge has no authority to unilaterally terminate proceedings to promote judicial economy (I.J. at 7-8). Finally, the DHS argues that, even if the Immigration Judge had the authority to terminate proceedings to promote judicial economy, judicial economy was not promoted in the present case by doing so (I.J. at 8-9).

We are persuaded by the DHS's arguments that the Immigration Judge erred in terminating the respondent's removal proceedings as improvidently begun (DHS's Br. at 6-9). The decision to place an alien in removal proceedings pursuant to the issuance of a NTA rests solely in the jurisdiction of the DHS; we have long recognized that such decisions involving the exercise of the DHS's prosecutorial discretion are not reviewable by Immigration Judges or the Board. *See Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998) (recognizing that the decision to initiate removal proceedings is within the unreviewable prosecutorial discretion of the DHS); *see e.g. Matter of Castellon*, 17 I&N Dec. 616, 619-20 (BIA 1981) (neither the Board nor Immigration Judges possess authority to review the manner in which the DHS exercises its discretionary powers). Moreover, an Immigration Judge lacks authority to review the DHS's decision regarding the type of proceedings an alien is placed into. *Matter of Lujan-Quintano*, 25 I&N Dec. 53, 56 (BIA 2009). Once an NTA is properly served and jurisdiction vests with the Immigration Judge, as it did in the present case, an Immigration Judge cannot terminate proceedings without a proper reason for doing so.

The authority of an Immigration Judge to terminate removal proceedings is limited to when the DHS cannot sustain the charge(s) of removability or in other specific circumstances consistent with the law and applicable regulations, which are not applicable here. *See generally* 8 C.F.R. §§ 1238.1(e) ("[T]he Immigration Judge may, upon the DHS's request, terminate the case"), 239.2(c), 1239.2(c) (permitting the DHS to file a motion to dismiss proceedings as improvidently begun), 1239.2(f) (an Immigration Judge may terminate removal proceedings to permit the alien to proceed to a final hearing on a pending application or petition for naturalization); *see also Matter of Sanchez-Herbert*, 26 I&N Dec. 43, 44-45 (BIA 2012) (If the DHS meets its burden, the Immigration Judge should issue an order of removal; if it cannot, the Immigration Judge should terminate proceedings). *Matter of W-C-B-*, 24 I&N Dec. 118 (BIA 2007), does not authorize an Immigration Judge to terminate proceedings in this case.

Finally, the promotion of judicial economy is an insufficient basis, without more, to terminate removal proceedings.

Based on the foregoing, we conclude the Immigration Judge improperly terminated the respondent's removal proceedings, and we will remand the record for the Immigration Judge to adjudicate the respondent's removability as charged in the current NTA, to determine whether the respondent is eligible for any form of relief from relief, and if so, to adjudicate such forms of relief from removal.

Accordingly, the following orders will be entered.

ORDER: The DHS's appeal is sustained.

FURTHER ORDER: The present removal proceedings are reinstated.

FURTHER ORDER: The record is remanded for further proceedings consistent with this order.

FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

In the Matter of: **Anahit Melkonyan** Case No: **A075 741 482**

RESPONDENT IN REMOVAL PROCEEDINGS

WRITTEN DECISION OF THE IMMIGRATION JUDGE

Respondent was placed in removal proceedings by issuance of a Notice to Appear, dated November 18, 2013. In the allegations of fact, it states that respondent was previously placed in removal proceedings under another name and A number and that she was ordered removed from the United States on May 19, 2000. DHS counsel submitted evidence establishing the prior removal proceedings and order (Exh. 3, pages 12-15). At the hearing on September 14, 2016, DHS counsel confirmed that the May 19, 2000, order of removal has not been executed and remains outstanding.

The court is terminating the instant removal proceedings (NTA issued November 18, 2013), as improvidently begun. There is an outstanding order of removal in this case. Proceeding on a new removal case when there is already an outstanding order of removal will not resolve the case because the outstanding removal order remains in effect, regardless of how the court were to rule in the instant case. It does not promote judicial economy for the court to proceed on a case when there is already an outstanding order of removal, which is not vacated by the issuance of a new Notice to Appear.

ORDER: Removal Proceedings begun by issuance of the NTA dated November 18, 2013 is hereby TERMINATED. The hearing date of February 2, 2017 at 8:00am is CANCELLED.

September 15, 2016

Rose Peters
Immigration Judge

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY:
[ ] MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer
[ ] ALIEN'S ATT/REP [ ] DHS
DATE: 9-15-16 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28
[ ] Legal Service List [ ] Other