U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: GALIMIDI, YOSSI

A 040-177-019

Date of this notice: 8/24/2016

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:
O'Leary, Brian M.
O'Connor, Blair
Mann, Ana

Userteam: Docket

File: A040 177 019 – Buffalo, NY

Date: AUG 24 2016

In re: YOSSI GALIMIDI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ashley F. Dees, Esquire

ON BEHALF OF DHS: Denise C. Hochul
Senior Attorney

APPLICATION: Reopening

The respondent, a native and citizen of Israel who was ordered removed from the United States in absentia on September 19, 2014, appeals the decision of the Immigration Judge, dated November 12, 2014, and mailed December 30, 2014, denying his motion to reopen. The respondent's appeal, which is opposed by the Department of Homeland Security (DHS), will be sustained.

Upon de novo review, in light of the totality of circumstances presented in this case, including the respondent's diligence in filing a motion to reopen; the absence of any DHS opposition to the respondent's motion to appear telephonically; the DHS non-opposition to a continuance; the fact that the denial of the motion to change venue was issued the day before the hearing despite being filed on September 2, 2014, and given that the denial of the motion to change venue merely stated denial was due to the government's objection,[1] we will sustain the appeal and allow the respondent another opportunity to appear for a hearing. *See Matter of W-F-*, 21 I&N Dec. 503, 509 (BIA 1996) (stating that, in determining whether exceptional circumstances exist to excuse an alien's failure to appear, the "totality of circumstances" pertaining to the alien's case must be considered).

Accordingly, the following order will be entered.

[1] An Immigration Judge may change venue "for good cause" upon a motion by a party. 8 C.F.R. § 1003.20(b). "Good cause is determined by balancing such factors as administrative convenience, the alien's residence, the location of witnesses, evidence and counsel, expeditious treatment of the case, and the cost of transporting witnesses and evidence to a new location." *See Lovell v. INS*, 52 F.3d 458, 460 (2d Cir. 1995) ("A decision regarding venue is discretionary, and is reviewable only for abuse of discretion."). Here, the denial of the change of venue motion does not provide any facts or analysis and does not indicate that the Immigration Judge evaluated whether good cause had been shown (Exh. 13).

ORDER: The appeal is sustained, the in absentia order is vacated, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BUFFALO, NEW YORK

In the Matter of:	
GALIMIDI, Yossi **A# 040-177-019**	**IN REMOVAL PROCEEDINGS**
Respondent	

CHARGES: INA § 212(a)(7)(A)(i)(I) Documentation Requirements

MOTIONS: Motion to Reopen and Rescind the *In Absentia* Order of Removal

ON BEHALF OF RESPONDENT
Ashley Foret Dees, Esq.
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Lake Charles, LA 70601

ON BEHALF OF THE DHS
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DECISION AND ORDER OF THE IMMIGRATION JUDGE

Yossi Galimidi's motion to reopen is **DENIED**.

I. FACTS AND PROCEDURAL HISTORY

Yossi Galimidi ("Respondent") is a 36-year-old native and citizen of Israel. Respondent is not a citizen or national of the United States. He arrived in the United States at or near New York, New York, at JFK International Airport on or about September 12, 1986. Respondent was admitted as a lawful permanent resident with a classification code of "P63" after inspection by an immigration officer.

On August 12, 2013, Respondent applied for admission into the U.S. at the Rainbow Bridge Port of Entry in Niagara Falls, New York. Respondent was not in possession of a valid immigrant document at this time, and was taken into DHS custody. On September 10, 2013, Respondent was paroled into the U.S. for one year. *See* Exh. 2.

On August 12, 2013, the Department of Homeland Security ("DHS") issued Respondent a Notice to Appear ("NTA"), alleging that:

1. You are not a citizen or national of the United States;
2. You are a native of Israel and a citizen of Israel;
3. You were admitted to the United States as a Lawful Permanent Resident on 9/12/1986 with a classification code of P63 at JFK International Airport in New York, NY;
4. On August 12, 2013 you applied for admission to the United States at the
5. Rainbow Bridge Port of Entry, Niagara Falls, NY;
6. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;

(*see* Exh. 1), charging him as subject to removal pursuant to INA § 212(a)(7)(A)(i)(I).[1] On the same day Respondent was issued the NTA, Respondent indicated in a sworn statement that he applied to renew his green card in 2011, but was denied because "[he] never showed up for the date [he] was supposed to be there." *See* Exh.14B; Exh. 18H.

Also on August 12, 2013, Respondent stated to DHS that "for the past 3.5 years, [he] was living in Israel taking care of [his] very sick grandfather." *See id.*

On September 2, 2014, Respondent filed a Motion to Change Venue from Buffalo, New York to New Orleans, Louisiana, as Respondent lived in Louisiana *See* Exh. 5.

On September 17, 2014, Respondent filed Motions to continue, to appear telephonically, and to waive appearance.

On September 18, 2014, the Court denied Respondent's Motion to Change Venue. Exh. 13.

On September 19, 2014, the Court ruled on Respondent's motions to continue, to appear telephonically, and to waive appearance as all being untimely; the Court denied all three motions. *See* Digital Audio Recording (Sept. 19, 2014). DHS did inform the Court as to a telephone call DHS counsel had with Respondent's counsel regarding the motion

[1] According to INA § 212(a)(7)(A)(i)(I), "[a]ny immigrant at the time of application for admission who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), . . . is inadmissible."

to continue. *Id.* DHS stated to Respondent's counsel that they would relay to the Court that they did not oppose a continuance, however, in light of the fact that DHS was called the morning of the scheduled hearing, DHS stated that they "did not know how that was actually going to be possible." *Id.* Additionally, Respondent did not appear for his master calendar hearing. *Id.* Consequently, Respondent was ordered removed to Israel *in absentia*. Exh. 18.

On October 15, 2014, Respondent filed a Motion to Reopen an *in Absentia* Order. *See* Exh. 19. Respondent argues that he could not make the trip from Lake Charles, Louisiana, to Buffalo, New York for his hearing date because of financial restrictions and the fact that Respondent ran his business "alone" and "had no employee or staff to whom he could leave his business for the three-day trip to Buffalo, New York." *Id.*, at 2. Respondent claims that his situation rises to the level of "exceptional circumstances." *Id.* Respondent claims that he has two avenues for relief with the Court: that he did not abandon his permanent resident status, and in the alternative, "he has a valid, bona fide marriage to a U.S. Citizen spouse who has filed an I-130 on his behalf." *Id.*

DHS opposes Respondent's motion to reopen. *See* Exh. 20. DHS argues that Respondent was given adequate notice of his hearing date, as well as cautioning if Respondent fails to appear at any scheduled hearing. See *id.* Further, DHS asserts that because Respondent's I-130 remains unadjudicated, Respondent's claim of relief is merely speculative. *Id.*

II. DOCUMENTARY EVIDENCE

The following documents are included in the record of proceedings:

Exhibit 1: Respondent's Notice to Appear, dated August 12, 2013
2: Notice to EOIR: Alien Address (Sept. 10, 2013)
3: Notice of Hearing (Feb. 3, 2014)
4: Alien's Change in Address Form/Immigration Court (Aug. 29, 2014)
5: Respondent's Motion to Change Venue (Sept. 2, 2014)
6: Notice of Hearing (Sept. 4, 2014)
7; DHS's Memorandum in Opposition to Respondent's Motion to Change Venue (Sept. 8, 2014)
8: Respondent's Response to Government Opposition to Motion to Change Venue (Sept. 16, 2014)
9: Respondent's Motion to Waive Respondent's Appearance (Sept. 17, 2014)
10: Respondent's Motion to Appear Telephonically (Sept. 17, 2014)
11: Respondent's Motion to Continue (Sept. 17, 2014)
12: Respondent's Counsel's Letter to the Court Re: Motions (Sept. 17, 2014)
13: Order of the IJ (denying Respondent's Motion to Change Venue) (Sept.18. 2014)

Group Exhibit 14: DHS material for submission to be considered at the Master Calendar Hearing (Sept. 19, 2014)

14A: Record of Deportable/Inadmissible Alien ("I-213") (Aug. 12, 2013)

14B: Record of Sworn Statement in Administrative Proceedings (Aug. 12, 2013)

15: Order of the IJ (denying Respondent's Motion to Waive Respondent's Appearance) (Sept. 19, 2014)

16: Order of the IJ (denying Respondent's Motion to Continue (Sept. 19, 2014)

17: Order of the IJ (denying Respondent's Motion to Appear Telephonically) (Sept. 19, 2014)

18: Order of the IJ (*in absentia* order of removal) (Sept. 19, 2014)

Group Exhibit 19: Respondent's Motion to Reopen an *in Absentia* Order, and supporting documents (Oct. 15, 2014)

19A: Respondent's Change in Address Form ("EOIR-33") (Oct. 15, 2014)

19B: Phone Log showing number of calls to Immigration Court and DHS Office of Chief Counsel (generated on Sept. 22, 2014)

19C: MapQuest map showing distance between Lake Charles, Louisiana, and Buffalo, New York

19D: Respondent's Affidavit (Oct. 13, 2014)

19E: List of current airfare from Lake Charles to Buffalo (generated for Oct. 13 - Oct. 15, 2014)

19F: I-130 Petition for Alien Spouse Receipt Notice (Sept. 26, 2014)

19G: Copy of I-130 documents mailed to USCIS RE: bona fide marriage

19G-1: I-130 filing fee of $420 and passport photos

19G-2: G-28 Notice of Entry of Appearance

19G-3: G-325A Biographic Information for Yossi Galimidi

19G-4: G-325a Biographic Information for Rita VanHavemaet

19G-5: I-130 Petition for Alien Relative

19G-6: Yossi Galimidi Birth Certificate

19G-7: Rita VanHavemaet Birth Certificate

19G-8: Lani Louise VanHavemaet Birth Certificate

19G-9: Katie Olsen Birth Certificate

19G-10: Marriage Certificate for Yossi and Rita Galimidi

19G-11: Photocopy of Respondent's passport

19G-12: Respondent's Canadian Temporary Resident Permit (Aug. 8, 2013)

19G-13: Respondent's I-94 Record Number

19G-14: Respondent's Temporary Permanent Resident Card (issued Aug. 12, 2013)

19G-15: Billing from Suddenlink and Letter from South Carolina Department of Revenue showing Joint Address of Yossi and Rita Galimidi

19G-16: Photos of Yossi and Rita Galimidi and family

19H: Record of Sworn Statement in Administrative Proceedings (Aug. 12, 2013)
19I: Copy of Respondent's Motion to Change Venue; DHS response; IJ Order
19J: Copy of Respondent's Motion to Continue; DHS response; IJ Order
19K: Copy of Respondent's Motion to Appear Telephonically; IJ Order
19L: Copy of Respondent's Motion Waive Respondent's Presence; IJ Order
19M: Documentation showing prices of hotels in Buffalo, NY
19N: Documentation showing rental car prices in Buffalo, NY
19O: Copy of Removal Order

Group Exhibit 20: DHS Memorandum in Opposition to the Respondent's Motion to Reopen Removal Proceedings (Oct. 27, 2014)
20A: Copy of Respondent's Notice to Appear

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has considered the entire record carefully. All evidence has been considered, even if not specifically addressed in the decision below.

A. Respondent's Motion to Reopen *in Absentia* Order of Removal

i. Respondent's argument that because he is the sole operator of his business and did not have any employees to look after the store, coupled with financial difficulties, amounts to "exceptional circumstances"[2]

An order of removal entered *in absentia* may be rescinded only: "(i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in [INA § 240(e)(1)]), or (ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 239(a) or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien." INA § 240(b)(5)(C).

Respondent does not allege that he failed to receive proper notice in these hearings. *See, e.g.*, Exh. 19. Section 239(a)(1) requires the government to provide an alien in removal proceedings with a Notice to Appear—either in person "or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of

[2] Respondent does not explicitly move this Court for a recession of his removal order, but in making the "exceptional circumstances" argument, he is invoking a motion to rescind the order. *See* INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii).

record, if any." The NTA must contain certain advisals, including the nature of the proceedings against the alien, the legal authority under which the proceedings are conducted, the acts or conduct alleged to be in violation of law, and the charges against the alien. *Id.*

Respondent clearly received written notice of his removal proceedings. The NTA that was served on Respondent bares his signature. *See* Exh. 1. Respondent's notice provided him with all of the advisals required by INA § 239(a)(1). *Id.* Further, Respondent's Change is Address Form again provides the warnings for failure to appear at a hearing, and bears Respondent's signature. *See* Exh. 4. Therefore, Respondent can only proceed under INA § 240(e)(1).

Respondent claims that his failure to appear was caused by "exceptional circumstances." However, he fails to give detail as to how being the sole operator of his business would bar Respondent from traveling to Buffalo, New York. Respondent claims that he could not be present in Buffalo for his master calendar hearing because at the time of the hearing, "Respondent ran his business alone and had no other employee or staff to whom he could leave his business for the three-day trip to Buffalo, New York." Exh. 19, at 2. Respondent further states that he could not be at his scheduled hearing because the trip would "take at least 3 days to accomplish, including thousands of dollars spent on airfare, rental cars and two nights in a hotel." *Id.* Specifically, in his affidavit (Exh. 19D), Respondent states that he is the owner of a business in Louisiana (*id.*, at ¶ 1), and that he was "unable to leave [his] business due to the fact that [he] run[s] it alone and did not have employees/staff to whom [he] could entrust the day-to-day business operations." *Id.* at ¶ 2. Respondent states that if he had to travel to Buffalo during the time of his first hearing, his business would have suffered "irreparable harm." Id., at ¶ 3. However, Respondent then states that he has since hired an employee. *Id.*, at ¶ 5.

Despite Respondent's timely motion to reopen within 180 days of the date of the Court's order of removal, based on the evidence submitted by Respondent, the Court finds that Respondent's failure to appear was not caused by exceptional circumstances. *Compare* Order of the IJ (Sept. 19, 2014) *with* Respondent's Motion to Reopen (Oct. 15, 2014). Exceptional circumstances are defined by statute as "circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien." INA § 240(e)(1).

If true, Respondent's circumstances are unfortunate, but they are not exceptional. Many individuals in removal proceedings experience financial difficulties. Respondent's circumstances are considerably less compelling than the examples provided in section 240(e)(1) of the Act. The Court notes that Respondent does not reside in New York State; however, his financial circumstances do not seem to be at issue currently. Only after the Order of Removal was issued did Respondent exercise due diligence to take care of personal matters.

ii. Respondent's argument that he has two available forms of relief: (1) that he did not abandon his permanent resident status, and (2) that his spouse filed an I-130 on his behalf

Respondent argues that he did not abandon his lawful permanent resident status when he was abroad for three and a half years after obtaining his lawful status. *See* Exh. 19, at 5; *see also* Exh. 14B. However, Respondent provides the Court with little to no documentation as to this issue, and does not address the issue at all in the instant motion. Respondent merely states that he did not abandon his status. Consequently, the Court will not make a legal finding as to whether Respondent abandoned his lawful permanent resident status at this time.

As to the filed I-130 Petition for Alien Relative, the Court agrees with DHS in that the petition remains unadjudicated, so Respondent's claim of relief is speculative at this point.

B. The Court's authority to reopen *sua sponte*

The Court declines to reopen Respondent's case *sua sponte*. *See* 8 C.F.R. § 1003.23(b). To the extent that the Court retains the authority to reopen a matter on its own motion, that extraordinary remedy is reserved for "truly exceptional circumstances." *Matter of G-D-*, 22 I&N Dec. 1132, 1134 (BIA 1999); *see also Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) ("The power to reopen on our own motion is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship."). Again, the Court finds that Respondent's position does not fall within "truly exceptional circumstances." The Court is not convinced that it would be appropriate to reopen Respondent's removal proceedings under the circumstances. Accordingly, the Court shall enter the following order:

ORDER

IT IS HEREBY ORDERED that Respondent's motion to reopen is **DENIED**.

11-12-14
Date

Philip J. Montante, Jr.
U.S. Immigration Judge