U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: VILLALBA GARRIGA, ROXANA ... **A 099-163-817**

Date of this notice: 7/18/2017

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:
Pauley, Roger
Greer, Anne J.
O'Connor, Blair

Userteam: Docket

File: A099 163 817 – Miami, FL

Date: JUL 18 2017

In re: Roxana Guadalupe Galindez VILLALBA GARRIGA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William M. Pavlov, Esquire

APPLICATION: Administrative closure; reconsideration

The respondent, a native and citizen of Argentina, appeals from the Immigration Judge's July 14, 2016, decision denying her motion to reconsider an earlier decision denying her motions to continue and administratively close her removal proceedings. The Department of Homeland Security ("DHS") has not filed a brief in response to the appeal. The appeal will be sustained. The record of proceedings will be administratively closed.

We review findings of fact, including credibility findings, for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent on appeal seeks administrative closure while the DHS adjudicates her application for adjustment of status under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended ("Cuban Adjustment Act").[1] Although the respondent is not a Cuban citizen or national, her husband is Cuban and in 2015 successfully adjusted his status to a lawful permanent resident of the United States under the Cuban Adjustment Act. "Section 1 of [the Cuban Adjustment Act] provides that the provisions of the Act shall be applicable to the spouse and child of any alien described in the Act, regardless of their citizenship and place of birth, who are residing with such alien in the United States." *Matter of Quijada-Cota*, 13 I&N Dec. 740, 741 (BIA 1971).

[1] We note the procedural posture of this case, where the respondent is appealing a denied motion to reconsider. However, the respondent's motion to reconsider contests the Immigration Judge's earlier denial of administrative closure. Thus, our decision as to whether reconsideration was correctly or incorrectly denied turns on the merits of the underlying decision regarding administrative closure.

Because the respondent is charged as an arriving alien, the Immigration Judge does not have jurisdiction to adjudicate the respondent's adjustment of status application.[2] *See Matter of Martinez-Montalvo*, *supra*, at 778. However, the Immigration Judge has the authority to administratively close removal proceedings when appropriate, including potentially in the respondent's case. *See Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012) (setting forth appropriate factors to consider in deciding a request to administratively close a case).

In this case, the Immigration Judge denied the respondent's request for administrative closure after finding that the respondent's adjustment application under the Cuban Adjustment Act had a minimal likelihood of success. The Immigration Judge noted that a previous Cuban Adjustment Act application filed by the respondent's husband in 2007 had previously been denied. A decision from the Administrative Appeals Office in that case notes a finding that the respondent's husband entered into a fraudulent marriage with the respondent.

However, the respondent's husband subsequently filed a Petition for Alien Relative (Form I-130) on behalf of the respondent, which was approved in 2016. This approved visa petition supports a claim that the respondent's marriage to her husband is bona fide. Moreover, while the Immigration Judge noted that a visa was not immediately available to the respondent, this requirement is relevant for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a), rather than the Cuban Adjustment Act. *Compare* section 245(a) of the Act (requiring in pertinent part that an immigrant visa be "immediately available") *with* section 1 of the Cuban Adjustment Act (having no comparable language).

In sum, we conclude that administrative closure is appropriate, particularly where the DHS has reached apparently conflicting conclusions regarding whether the respondent's marriage was bona fide. The DHS has jurisdiction to approve or disapprove the Form I-130 filed on the respondent's behalf, and we do not look behind the decision approving that petition. We also do not have jurisdiction to adjudicate the respondent's Cuban Adjustment Act application. To the extent that the DHS has reached contrary conclusions regarding the bona fides of the respondent's marriage, the DHS can resolve that issue in adjudicating the instant Cuban Adjustment Act application. We will administratively close the proceedings in the meantime.[3]

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[2] The respondent does not claim that the limited regulatory exception involving advance parole applies in her case. *See Matter of Martinez-Montalvo*, 24 I&N Dec. 778, 782 (BIA 2009) ("The only exception to this rule arises when an alien who leaves the United States while an adjustment application is pending with the USCIS returns pursuant to a grant of advance parole and is placed in removal proceedings.") (citing 8 C.F.R. §§ 1245.2(a)(1)(ii)(A)-(D)).

[3] We note the Immigration Judge's concern that the respondent had been in removal proceedings for approximately 6 years. However, the respondent and her husband had been diligently pursuing various avenues of relief and appeals during that time. The record does not reflect that they pursued these actions in bad faith or with the intent to improperly delay removal proceedings.

If either the respondent or the DHS wishes to reinstate proceedings, a written request may be made to the Board. The Board will take no further action in the respondent's case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondent's motion for administrative closure is granted.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
MIAMI, FLORIDA

IN THE MATTER OF:
Roxana Guadalupe Galindez-Garriga A Number: **099-163-817**
Respondent

In REMOVAL Proceedings

William M. Pavlov, Esq. [XX] Monica Beamer, DHS Counsel [XX] Pro Se [ ]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's **MOTION FOR RECONSIDERATION OF COURT'S DENIAL OF MOTION FOR ADMINISTRATIVE CLOSURE AND/OR FOR CONTINUANCE:**

IT IS HEREBY ORDERED that the Motion be: [] **GRANTED** [XX] **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
_XX__ Good cause has not been established for the Motion.
_____ The Court agrees with the reasons stated in the opposition to the Motion.
_____ The Motion is untimely per _____.
_____ **Venue is changed to the Immigration Court at:** _____
The Aliens' current address is _____

__XX__**Other:** **Respondent failed to establish any error in law or fact for reconsideration of the Court's prior June 21, 2016, orders. See 8 C.F.R section 1003.23(b)(2). In addition, respondent failed to establish good cause for a continuance of the proceedings and the oral motion to continue made on July 14, 2016, is also denied. See also Matter of Hashmi, 24 I & N Dec. 785 (BIA 2009).**

Deadlines:

_____ Application(s) for relief must be filed by _____.
_____ Respondent must comply with DHS biometric instructions by _____.

July 14, 2016
Date

Marsha Kay Nettles
U.S. Immigration Judge

Certificate of Service

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