



**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: A [REDACTED] J [REDACTED] M [REDACTED]

A [REDACTED] 274

**Date of this notice: 9/30/2015**

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'Herron, Margaret M  
Neal, David L  
Greer, Anne J.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED] 274 – Atlanta, GA

Date:

SEP 30 2015

In re: MARIA ANDRES-JUAN

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jessica Daman, Esquire

APPLICATION: Continuance; remand

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's decision dated April 14, 2015, denying his request for a continuance and ordering her removed from the United States to Guatemala. While the appeal was pending, the respondent filed a motion to remand. The Department of Homeland Security (DHS) has not opposed the appeal or the motion. The record will be remanded.

At a hearing on April 14, 2015, the then 14-year-old respondent indicated through counsel that she intended to seek Special Immigrant Juvenile (SIJ) status and requested a continuance for this purpose. The Immigration Judge instructed the respondent that she would need to provide a copy of the dependency petition filed with the state court.<sup>1</sup> The respondent did not provide a copy of the petition, but instead provided a letter from the Juvenile Court of Hall County in Georgia, dated April 9, 2015, confirming that the dependency petition had been filed and stating that the court was in the process of scheduling the matter for a hearing (Motion to Continue at 18). The DHS did not dispute that a dependency petition had been filed, but indicated that it would defer to the Immigration Judge's ruling on the motion (Tr. at 11). The Immigration Judge, after noting, in part, that other attorneys handling similar cases had provided the dependency petitions to the Immigration court, declined to further continue the proceedings. The Immigration Judge ultimately ordered the respondent removed to Guatemala.

On appeal, the respondent argues that the Immigration Judge (1) erred in requiring her to produce her juvenile state dependency petition because doing so would violate the Georgia Juvenile Code and the Georgia Rules of Professional Conduct and the petition is unnecessary to establish her prima facie eligibility for SIJ status; (2) violated her due process rights to a fair opportunity to apply for available relief, and (3) abused his discretion by refusing to grant the respondent a continuance to allow her to file for SIJ status.

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<sup>1</sup> A necessary precondition to SIJ status is the declaration of a juvenile court that the respondent is deserving of protection because reunification with her parents was not viable due to abuse, neglect, or abandonment. See section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J).

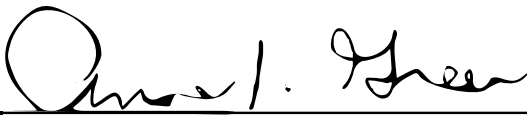
In support of her motion to remand, the respondent has submitted evidence showing that, subsequent to the Immigration Judge's decision, the dependency petition in fact was granted in state court on May 21, 2015, and that she filed a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) and an Application to Register Permanent Residence or Adjust Status (Form I-485) with United States Citizenship and Immigration Services (USCIS). The respondent requests that the case be remanded based on this proffered evidence.

Considering the new evidence that the respondent's dependency petition was granted and her application for SIJ status is now pending with USCIS, we will remand these proceedings to allow the respondent to request a continuance or administrative closure while she pursues SIJ status with USCIS. *See Matter of Sanchez Sosa*, 25 I&N Dec. 807, 815 (BIA 2012) ("As a general rule, there is a rebuttable presumption that an alien who has filed a prima facie approvable application with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time.") (internal citation omitted); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) (discussing standards for administrative closure); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (setting forth a framework to analyze whether good cause exists to continue proceedings to await adjudication by USCIS of a pending family-based visa petition).

Because the record will be remanded for further proceedings based on the filing of the I-360 petition and the I-485 application, the issues raised by the respondent on appeal in this case are moot. However, in view of the recurring nature of the issues raised in this case as evident from the Immigration Judge's decision and the arguments presented, we note that we find it was error to have denied a continuance in this case where there was no dispute that a dependency petition had been filed in the appropriate state court and that a hearing on the guardianship petition was in the process of being scheduled. As evidenced in this case, aside from other issues presented, denial of the continuance was not a good utilization of Immigration Court and Board resources. Absent compelling reasons, an Immigration Judge should continue proceedings to await adjudication of a pending state dependency petition in cases such as the one before us.<sup>2</sup>

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with the foregoing opinion and the entry of a new decision.

  
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FOR THE BOARD

<sup>2</sup> We separately note that guidance provided to Immigration Judges by the Chief Immigration Judge states that if an unaccompanied child is seeking SIJ status, "the case must be administratively closed or reset for that process to occur in the appropriate state or juvenile court." *See* Memorandum from Brian M. O'Leary, Chief Immigration Judge, to Immigration Judges (Mar. 24, 2015) ("Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of New Priorities").

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

File: A [REDACTED]-274

April 14, 2015

In the Matter of

M [REDACTED] A [REDACTED] J [REDACTED]  
RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: 212(a)(6)(A)(i).

APPLICATIONS: Continuance.

ON BEHALF OF RESPONDENT: CHRISTINA C. ITURRALDE

ON BEHALF OF DHS: GINGER K. VAUDREY

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of Guatemala, who was placed in removal proceedings with the filing of a Notice to Appear with the Court charging removability pursuant to the provisions of 212(a)(6)(A)(i) of the INA (Exhibit 1). Respondent filed written pleadings acknowledging proper service of the Notice to Appear, admitting the factual allegations and conceding removability. She requests a continuance today alleging that there is a dependency petition in the Hall County Juvenile Court, and requests a continuance for adjudication of such petition. The Court requested a copy of

the dependency petition, citing O.C.G.A. Section 15-11-710 as justification. The Court is authorized to grant continuances for "good cause." An applicant for a continuance must demonstrate *prima facie* eligibility for the relief sought.

This Court is permitted to request evidence which is confidential or even in some cases privileged. While a respondent may refuse to provide that information, this Court may consider a respondent's unwilling to produce evidence in its determination of *prima facie* eligibility for relief. In Matter of O-, the Board held that while the respondent had the right to refuse to answer questions based on the privilege against self-incrimination "the prohibition against the drawing of an unfavorable inference from a claim or privilege arises in criminal proceedings, not civil proceedings." Matter of O-, 6 I&N Dec. 646 (BIA 1954). The Court offered to review the petition in camera if that made the respondent more comfortable. She still refused to provide the petition.

The Court notes that Georgia Code Annotated 49-5-41 provides certain persons and agencies to have access to records. Notwithstanding the 49-5-40 declaring such records are confidential and privileged "any Federal, State or Local Government entity or any agency of any such entity that has a need for information contained in such reports in order to carry out its legal responsibilities to protect children from abuse and neglect is entitled to such information." This Court believes that it is a Federal Agency with legal responsibilities to protect children from abuse and neglect in at least two different ways. First, my duty regarding to be alert to human trafficking victims under the TVTA, and second, the Court's role in the SIJS procedure in general where the Court provides continuances or administrative closure for juveniles in removal proceedings to allow SIJS petitions to be adjudicated by USCIS.

This case can be analogized to the REAL ID Act requirements which require an applicant for asylum to produce all corroborating evidence reasonably available. While

some psychiatric and medical records might be confidential, an asylum applicant is not permitted to establish eligibility for relief simply by stating that such record exists which would prove his or her eligibility, but he cannot be compelled to present it to the Court because it is deemed confidential. The Court notes that the Board has dismissed motions to reopen where the respondent did not meet her burden of showing that she was sufficiently ill on the date of the hearing. See Matter of J-P-, 22 I&N Dec. 33 (BIA 1998). In Matter of J-P-, the Board specifically discussed the importance of a respondent's failure to provide requested records.

The critical aspect in this case is the respondent's burden of proof. When a respondent has such a burden the Court has the right to request relevant and available evidence, even if the evidence is confidential. While a respondent has the right to refuse to provide the evidence, the Court may formulate negative inferences from such refusal. In this case, respondent has been given the opportunity to establish a *prima facie* case for a Special Immigrant Juvenile Status eligibility. Step one of establishing that *prima facie* case is the dependency petition. This Court has seen dependency petitions where an individual is in the custody of both parents, and yet there is an allegation that they have been abandoned and the request is to put them back in the custody of the same parents they are currently with. The Court cannot find that a *prima facie* case for eligibility for Special Immigrant Juvenile Status has been made out.

The Court has offered to review the dependency in camera. Respondent has declined that offer. Respondent has failed to demonstrate a *prima facie* case. The Court finds that no good cause has been established for a continuance. No other relief is sought.

Respondent is ordered removed from the United States to Guatemala on the charge contained in the Notice to Appear.

**Please see the next page for electronic**

**signature**

J. DAN PELLETIER  
United States Immigration Judge

//s//

Immigration Judge J. DAN PELLETIER

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