



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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San Diego, CA 92101**

**Name: S [REDACTED] -C [REDACTED], A [REDACTED] A [REDACTED] -507**

**Date of this notice: 11/9/2018**

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:  
Mann, Ana  
Kelly, Edward F.  
Geller, Joan B

Userteam: Docket

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Falls Church, Virginia 22041

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File: A-507 – San Diego, CA

Date: NOV - 9 2018

In re: A-S-C- a.k.a.

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Murray D. Hilts, Esquire

APPLICATION: Remand; cancellation of removal

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's decision dated June 6, 2018, denying as abandoned his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Department of Homeland Security has not filed a brief. The case will be remanded for further proceedings.

The Immigration Judge determined that the respondent abandoned his application for relief because he did not submit the application by the April 23, 2018, filing deadline, or request an extension of time to file. The respondent argues on appeal that he should be afforded an opportunity to file his application because exceptional circumstances arose that prevented the timely filing of his application, namely the death of his attorney's father, which occurred around the time the application was due to be filed. The respondent presents evidence on appeal reflecting that his attorney's father passed away on April 7, 2018, and that a memorial service was held on April 28, 2018.

An Immigration Judge has the authority to set deadlines and deny as abandoned any application for relief that is not filed within the time set by the Immigration Court. *See Matter of Jean*, 17 I&N Dec. 100 (BIA 1979), *modified*, *Matter of R-R-*, 20 I&N Dec. 547 (BIA 1992); *see also* 8 C.F.R. § 1003.31(c) ("If an application or document is not filed within the time set by the Immigration Judge, the opportunity to file that application or document shall be deemed waived.").

The Immigration Judge reasonably found that the respondent had not filed his application by the deadline provided. While counsel submitted a pre-hearing brief to the Immigration Court on May 22, 2018, he did not file the application or request an extension. Nevertheless, under the particular circumstances of this case and the evidence which has been presented on appeal, we will remand the record for consideration of the respondent's application for cancellation of removal.

The respondent's counsel submitted a declaration on appeal, supported by evidence, indicating that he missed the respondent's deadline through no fault of the respondent. Counsel notes that his mind "was hazed with grief for [his] father's death and all of the family matters and preparation needed for his funeral, and also in handling of all other matters left behind by him." Given that the respondent's attorney has admitted error, noted that the missed deadline was not the fault of the respondent, and provided evidence that a close family member died around the time the application was due, we will remand for further proceedings. *See* 8 C.F.R. § 1003.2(c); *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992).

Cite as: A-S-C-, AXXX XXX 507 (BIA Nov. 9, 2018)

Accordingly, the record will be remanded for further proceedings.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and the entry of a new decision.

  
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FOR THE BOARD