



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324

Name: LITABA, JOY ATILA

A 200-224-355

Date of this notice: 9/11/2012

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:
Manuel, Elise L.

lucasd
Userteam: Docket

Immigrant & Refugee Appellate Center | www.irac.net

My

Falls Church, Virginia 22041

File: A200 224 355 - Haskell, TX¹

Date: SEP 11 2012

In re: JOY ATILA LITABA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Regina W. Njogu, Esquire

The respondent, a native and citizen of Kenya, appeals the decision of the Immigration Judge, dated April 11, 2012, denying her request for a continuance and ordering her removal from the United States.

Under the particular circumstances in this case, which include the relative youth of the respondent,² her articulated desire for additional time to seek counsel, counsel's appearance by telephone and request for additional time to meaningfully consult with the respondent, and the absence from the record of a Notice of Appearance as Representative Before the Immigration Court (Form EOIR-28), we find that a remand of this matter is warranted to allow the respondent a meaningful opportunity to consult with counsel and to seek relief from removal. *See* 8 C.F.R. §§ 1003.29, 1240.6; *Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012). Accordingly, the following order is entered.

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



FOR THE BOARD

¹ Proceedings before the Immigration Judge in this matter were completed in Haskell, Texas, where the case was docketed for hearing (*see* OPDM No. 04-06) and where the hearing notice directed the respondent to appear via video teleconference pursuant to section 240(b)(2)(A)(iii) of the Act. The Immigration Judge conducted the hearing there remotely from Dallas, Texas.

² The NTA lists the respondent's birthdate as April 10, 1993, and a 2002 entry. Thus, it appears she entered at 9 years old, and is currently 19. On June 15, 2012, subsequent to the Immigration Judge's decision in this case, the Secretary of the Department of Homeland Security (DHS) announced that certain young people, who are low law enforcement priorities, will be eligible to receive deferred action. The respondent may be eligible to seek deferred action. Information regarding DHS' Deferred Action Process for Young People Who are Low Enforcement Priorities may be obtained at the following DHS websites: USCIS at www.uscis.gov, and ICE at www.ice.gov. Individuals can also call USCIS' hotline at 1-800-375-5283 or ICE's hotline at 1-888-351-4024.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DALLAS, TEXAS

File: A200-224-355

April 11, 2012

In the Matter of

JOY ATILA LITABA

RESPONDENT

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)
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)

IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(1)(B) of the Act.

APPLICATIONS:

ON BEHALF OF RESPONDENT: REGINA NJOGU, ESQ.
3537 Spencerville Road, Suite 4
Burtonsville, Maryland 20866

ON BEHALF OF DHS: HEIDI GRAHAM, ESQ.
Assistant Chief Counsel
United States Department of Homeland Security
Office of the Chief Counsel
125 E. John Carpenter Freeway, Suite 500
Irving, Texas 75062

DECISION AND ORDER OF THE IMMIGRATION COURT

Respondent is a native and citizen of Kenya. The present action commenced when the Department of Homeland Security issued a Notice to Appear dated February 12, 2012. The Notice was

served on respondent on February 28, 2012 [Exhibit 1]. In the Notice to Appear, the Department alleged that respondent was subject to removal from the United States as a consequence of a violation of Section 237(a)(1)(B) of the Act, in that she was admitted to the United States at Houston, Texas, on or about December 8, 2002, as a non-immigrant B-2 visa, with authorization to remain in the United States for a temporary period not to exceed June 7, 2003. According to the Department, respondent remained in the United States beyond June 7, 2003, without authorization from either the Immigration and Naturalization Service or its successor agency, the Department of Homeland Security. As noted above, the Department alleged that these acts were a violation of Section 237(a)(1)(B) of the Act (the "overstay" provisions of Section 237).

Respondent first appeared in Court on March 13, 2012. At that time, respondent asked for time to consult with an attorney. The Court then set the matter for hearing on March 20, 2012. At that time, respondent again asked for additional time to speak with an attorney. Respondent's present counsel entered the case on March 26, 2012, through a properly formatted Form EOIR-28. On March 28, 2012, respondent's counsel asked for attorney preparation time. The matter was reset to April 4, 2012. On April 4, 2012, respondent's attorney was not available for hearing due to a family emergency. The matter was reset for hearing on April 11, 2012.

At the Master Calendar hearing conducted on April 11, 2012, respondent admitted the four factual allegations contained in the Notice to Appear and conceded the charge of removability under Section 237(a)(1)(B) of the Act. Based on respondent's admissions, the Court sustained the charge of removability as set forth above. Respondent declined to designate a country of removal and the Court designated Kenya as the country of nativity and citizenship. Respondent, through counsel, expressed that she had no fear of returning to Kenya.

The Court on several occasions in the course of the April 11, 2012 hearing asked respondent's counsel to designate relief. Respondent's counsel asked for a continuance to "explore relief" with her client. The Court denied that motion, because respondent's counsel has been attorney of record in this case since March 26, and, in the Court's opinion, had more than ample time to consult with her client relating to relief. Respondent's counsel then indicated that she planned to seek "prosecutorial discretion". This is not a remedy that is before or within the jurisdiction of this Court. Prosecutorial discretion is an ongoing initiative being handled by the United States Department of Homeland Security completely beyond the jurisdiction of this Court. Respondent's counsel was asked one final time relating to any relief she intended to proceed with before the Court. Respondent's counsel declined to seek any relief before the Court. In the absence of any relief

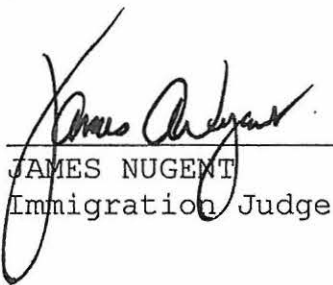
applications, including voluntary departure, the Court has no choice but issue the following orders.

ORDER

IT IS ORDERED that the single charge of removability under Section 237(a)(1)(B) of the Act is proven by clear and convincing evidence and, therefore, respondent is subject to removal.

IT IS FURTHER ORDERED that respondent, having been given the opportunity to file an application for relief and declining to do so and, having been found subject to removal from the United States, be and is hereby ordered removed from the United States to Kenya based on the charges contained in the Notice to Appear.

Dallas, Texas, this 11th day of April, 2012.



JAMES NUGENT
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE
JAMES NUGENT, in the matter of:

JOY ATILA LITABA

A200-224-355

DALLAS, TEXAS

is an accurate, verbatim transcript of the recording as provided
by the Executive Office for Immigration Review and that this is
the original transcript thereof for the file of the Executive
Office for Immigration Review.

A handwritten signature in cursive script, reading "Linda Dock", is written over a rectangular area of the document that has a light, dotted background pattern.

LINDA DOCK (Transcriber)

FREE STATE REPORTING, Inc.

MAY 24, 2012

(Completion Date)