



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: LEE, SANG MAE

A089-125-467

Date of this notice: 10/11/2011

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:

Creppy, Michael J.  
Malphrus, Garry D.  
Mullane, Hugh G.

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 22041

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File: A089 125 467 - Atlanta, GA

Date: OCT 11 2011

In re: SANG MAE LEE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John D. Shin, Esquire

ON BEHALF OF DHS: Morris I. Onyewuchi  
Assistant Chief Counsel

APPLICATION: Remand

The respondent, a native and citizen of Korea, appeals from the Immigration Judge's November 24, 2009, decision finding her removable and denying voluntary departure. On appeal, the respondent argues that she did not receive a full and fair hearing, because she was denied a continuance to obtain counsel. We agree. The appeal will be sustained and the record will be remanded for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

The Notice of Hearing was mailed to the respondent on September 24, 2009, for a hearing to be held on November 24, 2009. The respondent appeared at the hearing. The Notice to Appear (Exh. 1) was served on the respondent at the master calendar hearing on November 24, 2009 (Tr. at 4)<sup>1</sup>. The respondent's right to representation at no cost to the government was not explained to the respondent by the Immigration Judge on the record. The respondent requested more time to seek counsel, due to a car accident injury requiring treatment during the period before the master calendar (Tr. at 6). The respondent never waived her right to representation and the Immigration Judge proceeded to take pleadings (Tr. at 6). The respondent denied one of the allegations and claimed to have documentation extending her lawful presence in the United States (Tr. at 7). The Immigration Judge sustained the charge (Tr. at 8). The respondent seemed confused about the nature of the proceedings. The Immigration Judge recognized this confusion, stating: "I asked it three different times and you refused to answer, constantly talking about other things—your wishes, your desires, but not answering the court's question" (Tr. at 13). The Immigration Judge denied voluntary departure and ordered the respondent removed on November 24, 2009 (Tr. at 13).

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<sup>1</sup> The respondent stated she had received the NTA 2 months earlier (Tr. at 5).

An alien is entitled to a full and fair removal hearing. In order to establish a violation of due process rights, an alien must prove that there was an error and that he was prejudiced by the error. *Matter of Santos*, 19 I&N Dec. 105, 107-110 (BIA 1984). In *Matter of Santos* we held that the alien was not denied the privilege of counsel because the Immigration Judge granted one of the alien's requests for a continuance; the alien did not request more time to seek counsel; the alien's waiver of counsel appears voluntary, knowing, and intelligent; the alien waived counsel without undue influence; and the alien's statements did not reveal any confusion. *Id.* at 107.

In the respondent's case, none of the factors described in *Matter of Santos* are present. Here, the respondent repeatedly requested more time to seek counsel, was never granted a continuance, never waived the presence of counsel, and displayed confusion. Therefore, we find that the Immigration Judge erred in denying a continuance. Moreover, we find the respondent was prejudiced by that error, because she was unable to present her claim that her lawful presence was extended, unable to qualify herself for voluntary departure, and generally unable to represent herself. A remand is warranted to ensure that the respondent receives a fair and fair hearing. *Matter of Santos, supra*.

We will remand the record to the Immigration Court to provide the rights advisals to the respondent, a reasonable opportunity to obtain counsel, an opportunity for the presentation of additional relevant evidence, consideration of any relief available to the respondent, and the entry of a new decision. Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with this decision.

  
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FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT

Atlanta, Georgia

File A 89 125 467

Date: November 24, 2009

In the Matter of

SANG MAE LEE

Respondent

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGE: 237 (a) (1) (B)

APPLICATION: Continuance

APPEARANCES:

ON BEHALF OF RESPONDENT:

Pro se

ON BEHALF OF THE DEPARTMENT  
OF HOMELAND SECURITY:

Morris Onyewuchi, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is an adult female, native and citizen of South Korea who is placed in removal proceedings with the filing of a Notice to Appeal with the Court on July 6, 2009, charging removability pursuant to the provisions of Section 237(a) (1) (B) of the Immigration and Nationality Act. Respondent was served the Notice to Appear in June of 2009. After the Master Calendar

hearing on today's date, she admitted that she had had the Notice to Appear in excess of two months. She requested a further continuance to obtain an attorney. Her explanation of why she needed an attorney was somewhat indirect but essentially she alleged that she had had financial problems, had been in a wreck, and needed more time to find an attorney. The Court notes that Section 239 of the Act requires an individual be granted ten days in order to find an attorney. The Respondent's explanation was somewhat vague and the Court finds that she had adequate time to obtain an attorney. No documents were brought to establish any car wreck or that she had, in fact, contacted an attorney. At first she indicated that she was trying to find an attorney that spoke Korean. This Court takes judicial notice of the fact that there are a number of attorneys in the Atlanta area that practice immigration law that speak Korean. Therefore, the Court proceeded and allowed the Respondent the privilege of representing herself. She admitted most of the factual allegations. She did indicate that her husband had applied a number of times to be admitted to the seminary to study theology but there is no indication that her status was ever extended. Therefore, the Court found the 237(a)(1)(B) charge has been sustained by clear and convincing evidence.

The Court questioned Respondent further as to eligibility for relief. Given her date of entry, it does not appear that she would be eligible for any relief other than

voluntary departure. The Court attempted to qualify her for voluntary departure and she refused to affirmatively request voluntary departure. The Court made at least three different attempts to see if she was interested in voluntary departure. She refused to answer the Court's questions. Therefore, the Court cannot grant an application that has not been made. No application for voluntary departure was made to the Court despite of opportunity. Therefore, the Court enters the follow order.

Order that the Respondent be removed from the United States to South Korea on the charge contained in the Notice to Appear.

  
J. DAN PELLETIER  
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before  
J. DAN PELLETIER, in the matter of:

SANG MAE LEE

A 89 125 467

Atlanta, Georgia

was held as herein appears, and that this is the original  
transcript thereof for the file of the Executive Office for  
Immigration Review.

*Carol M. Flaherty*

Carol M. Flaherty, Transcriber

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January 28, 2010  
Completion Date