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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DHS/ICE Office of Chief Counsel - BOS
P.O. Box 8728
Boston, MA 02114

Name: A[redacted]-G[redacted] J[redacted]A[redacted] **A[redacted]-844**

Date of this notice: 3/8/2017

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:
Greer, Anne J.
Neal, David L
Kendall Clark, Molly

Userteam: Docket

File: A[redacted]844 – Boston, MA

Date: MAR - 8 2017

In re: J[redacted] A[redacted] A[redacted] G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carlos Magaletta, Esquire

ON BEHALF OF DHS: Peter J. Pratt
Assistant Chief Counsel

The Department of Homeland Security ("DHS") has appealed the Immigration Judge's July 21, 2016, decision which terminated the respondent's removal proceedings. The respondent did not file a response to the appeal. The DHS's appeal will be sustained, the proceedings will be reinstated, and the matter will be administratively closed.

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 their relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of El Salvador who entered the United States without authorization on or about April 18, 2015, when he was 17 years old. The respondent was designated as an Unaccompanied Alien Child (UAC). The Immigration Judge terminated the respondent's removal proceedings because the respondent filed a petition for Special Immigrant Juvenile (SIJ) status (Form I-360) and an accompanying application for adjustment of status (Form I-485) with the United States Citizenship and Immigration Services ("USCIS").

There is no dispute that the respondent is removable from the United States as alleged in the Notice of Appeal and is not currently eligible for relief from removal (Tr. at 29-30; Respondent's Written Pleading). We note that our check of the status of the respondent's SIJ petition on the USCIS website reflects that the respondent's SIJ petition was approved on January 31, 2017. As noted by the DHS, however, even with an approved petition, the Immigration Judge erred in terminating proceedings because the priority date for the respondent's petition is not yet current (DHS's Br. at 2), and thus, the respondent cannot adjust his status at this time. Accordingly, we will sustain the DHS's appeal and reinstate the respondent's removal proceedings.

While we conclude that termination in this case is inappropriate, administrative closure is warranted. According to the guidance provided to Immigration Judges by the Chief Immigration Judge, "administrative closure might be warranted" in cases where an unaccompanied child is seeking Special Immigrant Juvenile status, as the process can be lengthy. *See* Memorandum from Brian M. O'Leary, Chief Immigration Judge, to Immigration Judges (March 24, 2015) ("Docketing Practices Relating to Unaccompanied Children Cases and Adults

with Children Released on Alternatives to Detention Cases in Light of New Priorities"). In view of the respondent's approved SIJ petition, and the totality of the circumstances presented, the respondent's removal proceedings will be administratively closed. *See Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012).

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the 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 DHS's appeal is sustained and the removal proceedings against the respondent are reinstated.

FURTHER ORDER: The proceedings before the Board of Immigration Appeals in this case is administratively closed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

Magaletta & McCarthy
McCarthy, Kevin Robert
129 Portland Street
Boston, MA 02114

IN THE MATTER OF FILE A [redacted]-844 DATE: Jul 21, 2016
A[redacted]-G[redacted] J[redacted] A[redacted]

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

✓ OTHER: Termination Order

Gloria E. Jones
COURT CLERK
IMMIGRATION COURT FF

CC: PRATT, PETER
ASSISTANT CHIEF COUNSEL
BOSTON, MA, 022030000

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

In the Matter of: A [redacted]-G[redacted] J[redacted] A[redacted] File: A [redacted]-844

ORDER OF THE IMMIGRATION JUDGE

United States Citizenship and Immigration Services (USCIS) adjudicates applications for special immigrant juvenile status, which are filed on Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant). In adjudicating such applications, USCIS must determine whether the applicant qualifies as a "special immigrant juvenile," which requires that the applicant be: 1) present in the United States; 2) under 21 years old; 3) declared dependent upon a juvenile court in the United States, or legally committed to or placed under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court; 4) the subject of a determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law; and 5) the subject of a determination in administrative or judicial proceedings that returning to his or her country of nationality or last habitual residence is not in his or her best interest. *See* INA § 101(a)(27)(J). In addition, the regulations require that the applicant be unmarried. *See* 8 C.F.R. § 204.11(c)(1)-(2).

Once USCIS approves an applicant's Form I-360, the applicant is eligible for an EB-4 visa, which allows the applicant to adjust his or her status to that of a lawful permanent resident. However, EB-4 visas are subject to availability. *See* INA § 202(a)(2). Inasmuch as the Department of State May 2016 visa bulletin indicates that the priority date for EB-4 visas is January 1, 2010, for applicants from El Salvador, Guatemala, and Honduras, only those applicants with an approved Form I-360 ***and*** a priority date earlier than January 1, 2010, are eligible for a visa, and therefore, adjustment of status.

In this case, the respondent has an approved or pending Form I-360, but he/she has a priority date after January 1, 2010. Approval of the respondent's Form I-360 means that the Department of Homeland Security (USCIS) has determined that the respondent is dependent upon a juvenile court, agency, department, or appointed individual located in the United States, and that returning the respondent to his/her country of nationality is not in his/her best interest. *See* INA § 101(a)(27)(J). Furthermore, there is no evidence to suggest that the respondent will not be granted a visa once one becomes available. Thus, the respondent is simply waiting for an EB-4 visa to become available so that he/she may adjust status.

DHS opposes termination and prefers to keep the matter on the Court's calendar. It is uncertain when a visa may become available to the respondent. Keeping the respondent's case on the calendar will more likely than not result in continuances and/or motions to advance, further exacerbating the Court's already crowded docket. Such circumstances impede the

Court's ability to achieve the efficient administration of justice while maintaining fairness in the course of resolving disputes. Moreover, the likely result of the adjudication of the petition at USCIS, barring unforeseen circumstances, is that the respondent will be granted a visa based upon his/her approved (or a favorable adjudication of his/her pending) application and, in turn, removal proceedings will be terminated. The Court must focus resources on matters ripe for resolution. Accordingly, the respondent's removal proceedings are terminated.

Date: 7/21/14

ROBIN E. FEDER
United States Immigration Judge