



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: BLANCO-ACUNA, JESUS**

**A 205-631-914**

**Date of this notice: 9/29/2016**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Grant, Edward R.

User team: Docket

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Falls Church, Virginia 22041

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File: A205 631 914 – Louisville, KY<sup>1</sup>

Date: SEP 29 2016

In re: JESUS BLANCO-ACUNA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rusty O'Brien, Esquire

APPLICATION: Continuance

The respondent has appealed the Immigration Judge's September 8, 2015, decision. The record will be remanded.

We find that the Immigration Judge's decision is insufficient for our review. The record reflects that the Department of Homeland Security (DHS) issued a Notice to Appear on December 14, 2012, charging the respondent as an alien present in the United States who has not been admitted or paroled (Exh. 1). On November 22, 2013, the Memphis Immigration Court scheduled the respondent for his initial master hearing on August 10, 2015. On that day, the respondent appeared with counsel and sought a continuance to await the adjudication of a Petition for Alien Relative (Form I-130) so that he could then pursue adjustment of status in conjunction with a provisional unlawful presence waiver (Tr. at 5). *See* 8 C.F.R. § 212.7(e); *see also Expansion of Provisional Unlawful Presence Waivers of Inadmissibility*, 81 Fed. Reg. 50244 (July 29, 2016). In denying the respondent's continuance request, the Immigration Judge did not discuss our decision in *Matter of Hashmi*, 24 I&N Dec. 795 (BIA 2009), which sets forth applicable factors to address when adjudicating motions for a continuance. Given the circumstances of this case, including that the respondent submitted evidence that he is married to a United States citizen with whom he has a United States citizen child, we find that a remand is warranted for the issuance of a new decision. Upon remand the parties should address whether the respondent is likely to qualify for a provisional unlawful presence waiver and, if so, whether administrative closure would be appropriate. *See Matter of Avetisyan*, 25 I&N Dec. 688, 694 n.4 (BIA 2012) (encouraging DHS to consider administrative closure in appropriate circumstances).

Accordingly, the following order shall be entered:

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<sup>1</sup> Proceedings before the Immigration Judge in this matter were completed in Louisville, Kentucky where the case was docketed for hearing (*see* OPM No. 04-06). The Immigration Judge conducted the hearings there remotely from the Memphis Immigration Court, via video teleconference pursuant to section 240(b)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. §1229a(b)(2)(A)(iii).

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

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
MEMPHIS, TENNESSEE

File: A205-631-914

September 8, 2015

In the Matter of

JESUS BLANCO-ACUNA

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Voluntary departure only.

ON BEHALF OF RESPONDENT: RUSTY O'BRIEN

| ON BEHALF OF DHS: RYAN MCGONIGLE AGONACLE

ORAL DECISION OF THE IMMIGRATION JUDGE

Procedural History

These removal proceedings were initiated by the filing of a Notice to Appear dated December 14, 2012, by the Department of Homeland Security. This Notice to Appear has been marked as Exhibit 1. The Department alleges that the respondent is not a citizen or national of the United States, but a native and citizen of Mexico who entered the United States at an unknown place on or about an unknown

date and he was not then admitted or paroled after inspection by an Immigration officer.

#### Removability

Respondent has admitted in Exhibit 2 the allegations contained in the Notice to Appear in his motion to change venue. He has admitted that he is not a citizen of the United States; that he is a native and citizen of Mexico; that he entered the United States in 2005, and was not then inspected or admitted. He has conceded removability pursuant to the charge of 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled. See Exhibit 2. Based upon the respondent's written admissions and concessions and my review of the record of proceeding, I find that removability has been established by clear and convincing evidence.

#### Relief

The only relief the respondent is seeking before this Court is voluntary departure. On today's date, September 8, 2015, he has requested a continuance for the adjudication of an I-130. Respondent was married on June 29, 2012, in Louisville, Kentucky, but did not file an I-130 until on or about February of 2015, approximately a two-and-a-half year delay. Respondent wants a continuance so that the I-130 can be adjudicated and that he can consular process. He is not eligible for adjustment of status. In fact, he is not eligible for any relief before this Court other than voluntary departure. The Department of Homeland Security has opposed any grant of prosecutorial discretion based on respondent's two convictions for a DUI. While the Court is concerned about the respondent's two convictions for driving under the influence of intoxicants, he is not statutorily ineligible for the privilege of voluntary departure. In this case, the Court will grant the respondent a period of 60 days voluntary departure until November 9, 2015, and as required by the regulations, must impose a bond in the amount of \$500, payable within five business days. The Court

cannot continue this case, which has been pending for more than two years, for relief that is not available before the Court, and it will not do so.

ORDERS

The following orders are hereby entered:

IT IS HEREBY ORDERED that the respondent's request for a continuance be denied.

IT IS FURTHER ORDERED that the respondent be granted voluntary departure on or before November 9, 2015, with a \$500 bond posted no later than five business days which would be September 15, 2015.

**Please see the next page for electronic**

**signature**

RICHARD J. AVERWATER  
Immigration Judge

//s//

Immigration Judge RICHARD J. AVERWATER

averwatr on November 19, 2015 at 1:52 PM GMT

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)