



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MONTOYA, DALILA ELIZABETH M A 073-402-255

Date of this notice: 8/15/2019

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:
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

File: A073-402-255 – Henderson, NV

Date:

AUG 15 2019

In re: Dalila Elizabeth M. MONTOYA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alissa A. Cooley, Esquire

APPLICATION: Cancellation of removal; voluntary departure

The respondent has filed an appeal from the Immigration Judge's order dated June 6, 2019. The record will be remanded.

The Immigration Judge's order reflects that the respondent waived appeal. However, the record does not establish that the unrepresented respondent made a knowing and intelligent waiver of her appeal rights. *See Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320, 1323 (BIA 2000) (requiring that waiver of appeal be knowing and intelligent and explaining that a determination as to whether a waiver was knowing and intelligent depends on the facts of the individual case).

The transcript of proceedings shows that the Immigration Judge advised the respondent that her applications for cancellation of removal and voluntary departure would be denied (Tr. at 89-93). The Immigration Judge asked the respondent whether she would like to "reserve appeal or accept the order as final" (Tr. at 93). The respondent replied, "I'll accept it" (Tr. at 93).

The exchange between the respondent and the Immigration Judge is not sufficient to show that the respondent made a knowing and intelligent appeal waiver. In *Matter of Rodriguez-Diaz*, 22 I&N Dec. at 1322, we specifically explained that the significance of the shorthand expression commonly used by Immigration Judges of accepting a decision as "final" may not be apparent to an unrepresented respondent. In that case, we set out an example of a reasonably comprehensive formulation of an appropriate discussion of appeal rights. *Id.* at 1323. That example included warnings not present in this case, such as advising the respondent that the respondent could reserve appeal and decide at a later date as to whether she actually would file an appeal, and that any waiver of the right to appeal was an irrevocable waiver of the right to appeal such that she could not change her mind about accepting a removal order. The example in *Rodriguez-Diaz* also included directions on how the respondent would file an appeal. Here, there was no explanation of the respondent's appeal rights after the Immigration Judge advised that the respondent's applications for relief were going to be denied.

Because there was no knowing and intelligent waiver of the right to appeal, we will consider the respondent's timely appeal. In considering the appeal, we find it necessary to remand the record because the Immigration Judge did not issue a separate, prepared decision explaining the reasoning for the decision. Accordingly, the record will be returned to the Immigration Judge for the preparation of a full decision. Upon preparation of the full decision, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the respondent and on the Department of Homeland Security (DHS). The Board will thereafter give the parties an opportunity to submit briefs in accordance with the regulations.

ORDER: The record is returned to the Immigration Court for further action as required above.


FOR THE BOARD