U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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3853 NORTHDALE BLVD 302
TAMPA, FL 33624

DHS/ICE Office of Chief Counsel - ORL
3535 Lawton Road, Suite 100
Orlando, FL 32803

Name: [redacted]

A [redacted]

Date of this notice: 6/29/2017

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

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Adkins-Blanch, Charles K.

Userteam: Docket

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5107 Leesburg Pike, Suite 2000
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C/O BAKER COUNTY JAIL
1 SHERIFFS OFFICE DRIVE
MCCLENNY, FL 32063

DHS/ICE Office of Chief Counsel - ORL
3535 Lawton Road, Suite 100
Orlando, FL 32803

Name:

A

Date of this notice: 6/29/2017

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Adkins-Blanch, Charles K.

Userteam:

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted] – Orlando, FL

Date: JUN 29 2017

[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Simon Tsang, Esquire

ON BEHALF OF DHS: Stacie L. Chapman
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] - Controlled substance violation

Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Continuance

The respondent appeals from an Immigration Judge's April 26, 2017, decision denying his request for a continuance and ordering him removed from the United States. The record will be remanded to the Immigration Court for further proceedings consistent with this opinion and the entry of a new decision.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent, a native and citizen of Mexico, does not dispute that he is inadmissible and subject to removal as charged. The only issue presented on appeal concerns the Immigration Judge's denial of his continuance request while awaiting adjudication of his pending nonimmigrant U visa petition and supporting documentation he filed with the United States Citizenship and Immigration Services ("USCIS").

The record reflects the respondent has applied for classification as a nonimmigrant U visa applicant, and the USCIS appears to have determined the respondent is prima facie eligible for that classification. Accordingly, the respondent requested that his removal proceedings be continued to await the USCIS' final adjudication of his U visa petition. The record reflects

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the DHS indicated it had requested the USCIS place the adjudication of the U visa petition on an expedited track (Tr. at 39-40). Although the record reflects that at the April 26, 2017, hearing, the respondent suggested the USCIS appeared to be approximately 2 months away from processing the application, the DHS indicated to the Immigration Judge that it could not give a specific timeline for the expedited adjudication (Tr. at 47-48). The record indicates that prior continuances for the adjudication of the U visa petition were granted in this case. However, although not addressed in his decision, the record reflects the Immigration Judge denied the respondent's request for a further continuance (Tr. at 48).

"As a general rule, there is a rebuttable presumption that an alien who has filed a prima facie approvable [U visa petition] with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time." *See Matter of Sanchez Sosa*, 25 I&N Dec. 807, 815 (BIA 2012). In addition, we held in *Matter of Sanchez Sosa*, that, in determining whether good cause exists to continue removal proceedings to await the adjudication of an alien's pending U visa petition, an Immigration Judge should consider the following: (1) the DHS's position with respect to the request; (2) whether the underlying visa petition is prima facie approvable; and (3) the reason for the continuance request, along with any other relevant procedural factors. *See id.* at 812-13. Moreover, "[i]f the DHS does not oppose a continuance, 'the proceedings ordinarily should be continued by the Immigration Judge in the absence of unusual, clearly identified, and supported reasons for not doing so.'" *Id.* at 813 (quoting *Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009)).

There is no indication from the record that the respondent has engaged in dilatory behavior; rather, the delay associated with the processing of his U visa petition appears to be attributable to the USCIS administrative process. "Any delay not attributable to the alien 'augurs in favor of a continuance.'" *Matter of Sanchez Sosa, supra*, at 814 (quoting in part *Matter of Hashmi, supra*, at 793); *see also Malilia v. Holder*, 632 F.3d 598, 606 (9th Cir. 2011) ("[D]elays in the USCIS approval process are no reason to deny an otherwise reasonable continuance request.").

Nonetheless, even in those instances where the DHS opposes the continuance, the Immigration Judge should consider the likelihood of success of the U visa application by (1) first inquiring whether the respondent has demonstrated that he suffered substantial physical or mental abuse as the victim of a qualifying crime, and if so, (2) next exploring whether the respondent has been, is being, or will be helpful to the authorities. *See id.* at 813-14. A respondent may demonstrate his cooperation with the authorities by providing a signed LEC, as he has done in this case. *See id.* at 813. As we also noted in *Matter of Sanchez Sosa,* the record reflects the respondent in this case provided the Immigration Judge with copies of the Form I-918 and the Form I-918 Supplement B that have been filed in this case, as well as copies of other relevant supporting documents (Group Exh. 3). *See id.* at 814. It does not appear, however, the Immigration Judge considered the factors we outlined in *Matter of Sanchez Sosa, supra,* in determining whether a continuance was warranted in this case, or even addressed the denial of the request for a further continuance in his written decision.

Therefore, we will remand the record to the Immigration Judge to apply the factors set forth in *Matter of Sanchez Sosa*, *supra,* to determine whether the respondent established good cause for a reasonable further continuance of his removal proceedings to await USCIS's expedited

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adjudication of his pending U visa petition, and to address that issue in a written decision supported by the requisite legal analysis.

Accordingly, the following order will be entered.

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

FOR THE BOARD

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ORLANDO, FLORIDA

File: [redacted]

April 26, 2017

In the Matter of

[redacted]) IN REMOVAL PROCEEDINGS
)
)
RESPONDENT)

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: Simon Singh

ON BEHALF OF DHS: Stacey Chapman
Assistant Chief Cousnel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent's a 53-year-old male, native and citizen of Mexico, who's admitted to the factual allegations set forth and contained in the Notice to Appear and has conceded removal and based upon this admission for removal has established by clear and convincing and unequivocal evidence and the court not only, based upon his admissions but the submissions entered into the record and the record of proceedings herein, show that the respondent is removable under 2(12)(a)(5), 2(12)(a)(7), and 2(12)(a)(2) of the Immigration and Nationality Act. The court does not find that he has any viable forms of relief that the court has jurisdiction of, that the court didn't see at this

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particular time. Therefore, it's the order and the judgment of the court that the respondent is hereby removed and deported from the United States to Mexico on the charges as set forth and contained in the Notice to Appear.

PHILIP J. MONTANTE JR
Immigration Judge

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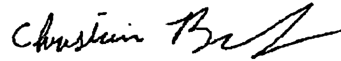
CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE PHILIP J. MONTANTE JR, in the matter of:

ORLANDO, FLORIDA

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



CHRISTIANA BEHRINGER (Transcriber)

NATIONAL CAPITOL CONTRACTING

May 22, 2017

(Completion Date)

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