U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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180 Spring Street, Suite 332
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Name: [redacted] [redacted]

Date of this notice: 1/31/2012

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:
Liebowitz, Ellen C

schuckers

File: [redacted] - Atlanta, GA Date: JAN 31 2012

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: James Feroli, Esquire

ON BEHALF OF DHS: Nichole S. Lillibridge
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; voluntary departure; remand

The respondent, a native and citizen of Tanzania, has appealed an Immigration Judge's August 24, 2010, decision, denying her applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3).[1] The Department of Homeland Security ("DHS") has opposed the appeal. While the appeal was pending, the respondent filed a motion to remand. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including any determination of credibility, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met their burdens of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii). As the respondent submitted her application after May 11, 2005, it is governed by the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42, 43 (BIA 2006).

On September 22, 2009, we dismissed the respondent's appeal from the Immigration Judge's denial of asylum and withholding of removal. On December 22, 2009, the respondent filed a timely motion to reopen with the Board based on additional evidence regarding her fear of persecution. We granted the motion on June 30, 2010, and remanded the record to the Immigration Judge for further proceedings.

The Immigration Judge found that consideration of the new evidence submitted with the motion did not alter his prior finding that the respondent had not established that it was more likely than not that she would face persecution upon her return to Tanzania. He also declined to consider the December 10, 2007, letter from a notary indicating that the respondent's father filed a lawsuit against

[1] The Immigration Judge mistakenly addressed the Convention Against Torture ("CAT") claim on remand, even though the respondent never applied for CAT, either at her original hearing or at the remanded hearing (Tr. at 5, Nov. 20, 2007; Tr. at 35-36, Aug. 24, 2010). Therefore, the issue of the respondent's eligibility for CAT protection is not before us.

[redacted]

the respondent's aunt for assisting in the respondent's disappearance (Exh. 9, tab BB), and the November 30, 2007, document entitled, "Modus Operandi and Property Form," issued by the Ministry of Home Affairs, regarding the disappearance of the respondent in 2003 when she fled to the United States (Exh. 9, tab CC). The Immigration Judge noted that both of these documents were previously available and the respondent had not provided an explanation for the failure to present the evidence at an earlier date (I.J. at 5, Aug. 24, 2010).

However, we have historically treated a remand as effective for consideration of all matters unless it is specifically limited to a stated purpose. *See Matter of Patel*, 16 I&N Dec. 600 (BIA 1978) (where the Board remands a case to an Immigration Judge for further proceedings, it divests itself of jurisdiction of that case unless jurisdiction is expressly retained). In our remand, we stated that "the motion to reopen is granted and the record is remanded for further proceedings." We did not qualify or limit the scope of our remand in any way. Therefore, the Immigration Judge should have considered the 2007 documents, and we will remand the record to allow the Immigration Judge to do so.

Likewise, the record will be remanded for the Immigration Judge to reconsider the respondent's application for voluntary departure. The Immigration Judge originally granted voluntary departure on April 18, 2008, conditioned upon the posting of a $500 bond. In our September 22, 2009, decision, we reinstated voluntary departure.[2] At the hearing on remand, the respondent admitted that she never posted the voluntary departure bond (Tr. at 3, Aug. 24, 2010). The Immigration Judge found that the failure to post the bond rendered the respondent ineligible for voluntary departure for a period of 10 years (I.J. at 3, Aug. 24, 2010). The respondent argues that under *Matter of Velasco*, 25 I&N Dec. 143 (BIA 2009), and *Matter of Diaz-Ruacho*, 24 I&N Dec. 47 (BIA 2006), the civil penalties for failing to depart under section 240B(d)(1) do not apply because she was granted voluntary departure prior to the January 20, 2009, effective date of the new regulations. We agree.

Therefore, the record will be remanded to the Immigration Judge. On remand, the Immigration Judge should consider all submitted evidence in considering the respondent's applications for asylum, withholding of removal, and voluntary departure. If the Immigration Judge grants voluntary departure, we note that he must provide the respondent with the required advisals under the revised regulations at 8 C.F.R. §§ 1240.26(c)(3) and (4). *See Matter of Gamero*, *supra.*

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[2] Because the Immigration Judge granted voluntary departure prior to the effective date of the new rule, the grant of voluntary departure was automatically vacated under the prior regulatory scheme when the respondent failed to post the required bond. *See Matter of Velasco*, 25 I&N Dec. 143 (BIA 2009); *Matter of Diaz-Ruacho*, 24 I&N Dec. 47 (BIA 2006). However, there was no evidence before us at that time to indicate that the bond had not been filed. *See Matter of Gamero*, 25 I&N Dec. 164, 167 n.5 (BIA 2010) (prior to the new regulations, our general practice was to presume that the required bond had been posted with the DHS unless we were specifically informed that the bond had not been posted).

[redacted]

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

Ellen Kuhowitz
FOR THE BOARD