



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041*

Hutchins, Thomas
6121 Lincolnia Road, Suite 400-B
Alexandria, VA 22312-0000

Office of the District Counsel/BO
P.O. Box 8728
Boston, MA 02114

Name: KIEU, VU CONG

A42-200-297

Date of this notice: 01/05/2001

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

Very Truly Yours.

Paul W. Schmidt
Chairman

Enclosure

Panel Members:

FILPPU, LAURI S.
MILLER, NEIL P.
MOSCATO, ANTHONY C.

RECEIVED
BY T DATE 3/8/2001

Falls Church, Virginia 22041

File: A42 200 297 - Boston

Date:

JAN - 5 2001

In re: VU CONG KIEU

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -
Convicted of two or more crimes involving moral turpitude

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Withholding of removal; Relief under the Convention Against Torture; Remand

The respondent appeals from the Immigration Judge's June 13, 2000, denial of his applications for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), and for relief under the United Nations Convention Against Torture.¹ The appeal will be sustained, and the record will be remanded.

The respondent's principal argument on appeal is that he was deprived of a full and fair opportunity to present his claims for withholding and for CAT relief due to ineffective assistance of counsel. In support of this assertion, he states that his attorney met only once with him to prepare him for his hearing, and did not take the time to fully explore his claim or explain to him what he needed to testify about. He also contends that his attorney did not question him in any detail regarding the core elements of his claim that he was harmed in the past and faces future harm in Vietnam because he is of mixed race, *i.e.* African-American and Vietnamese heritage.

In *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), this Board laid out the requirements an alien must meet in order to support a claim of ineffective assistance of counsel. Under *Lozada*, the motion must be supported by an affidavit of the respondent setting forth in detail the agreement that was entered into with respect to the actions to be taken and what representations counsel did or did not make, counsel must be informed of the allegations against him and provided an opportunity to respond, and the motion must reflect whether a complaint has been filed with the appropriate disciplinary authorities. *Matter of Lozada, supra*, at 639.

¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/39/51 (1984).

The respondent in this case has met the *Lozada* requirements, and we find it appropriate to remand this matter to allow the respondent an opportunity to fully present his applications for withholding of removal and CAT relief. The respondent has provided sworn statements detailing the representation agreement entered into between the respondent's mother and his prior counsel, as well as copies of the complaint that was filed with the Vermont State Bar and letters informing prior counsel of this complaint and the basis for the allegations against him (attachments to Respondent's Brief). In addition, the respondent has provided evidence that other complaints have also been filed against his prior attorney, and that his prior attorney has agreed to relinquish his license to practice in Vermont (Supplement to Brief, Exh. 1, Second Motion to Supplement, Exh. B).

Moreover, the respondent appears to have been prejudiced by his attorney's ineffective assistance. A review of the transcript reveals that the respondent's attorney appeared by video and asked only four general questions regarding why the respondent sought deferral of removal to Vietnam and what he feared would happen to him if he returned (Tr. at 46-47). When his fifth question was challenged because it was a leading question, he indicated he had nothing further (Tr. at 47-48). He failed to elicit any testimony relating to the allegations set forth in the respondent's application, such as the respondent's mixed racial heritage, his contention that the Vietnamese government is "racist," his assertion that his mother was jailed and he was "beaten several times," and that he experienced "severe physical and mental pain and suffering." As a general rule, litigants are bound by the conduct of their attorneys, absent egregious circumstances. *See Magallanes-Damian v. INS*, 783 F.2d 931 (9th Cir. 1986). To prevail on a claim of ineffective assistance of counsel, the respondent must allege sufficient facts to show that he was "prevented from reasonably presenting his case." *Lozada v. INS*, *supra* at 13-14. In this case, we conclude that the respondent has shown that he was prevented from reasonably presenting his case where his prior attorney did not provide him with an opportunity to testify fully regarding his past experiences in Vietnam, the extent of his injuries there, and the basis for his fear of harm if he returns to Vietnam. Although we do not make any determination as to the ultimate merits of the respondent's applications, we find that he was not provided a full and fair opportunity to present his claims, and that a remand is therefore warranted.

ORDER: The appeal is sustained.

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



FOR THE BOARD

Board Member Lauri Steven Filppu concurs in the result to avoid a possible miscarriage of justice.