Matter of K-K-U-J-, Respondent

Decided by Board August 27, 2026 [1]

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

The Immigration Judge erred in finding exceptional circumstances warranting sua sponte reopening and rescission of an in absentia removal order where the record did not support the respondent's claim that an individual misled him into believing he did not need to appear in Immigration Court.

FOR THE RESPONDENT: Pro se

FOR THE DEPARTMENT OF HOMELAND SECURITY: Maria E. Arcara, Counsel

BEFORE: Board Panel: GEMOETS and VOLKERT, Appellate Immigration Judges; TERRIEN, Temporary Appellate Immigration Judge.

TERRIEN, Temporary Appellate Immigration Judge:

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's May 9, 2026, decision granting the respondent's motion to reopen and rescind the in absentia removal order. The respondent, a native and citizen of Uzbekistan, has not responded to the appeal. The appeal will be sustained, and the Immigration Judge's decision will be reversed.

The Immigration Judge found that the respondent contracted an individual to request a continuance of the proceedings. The respondent asserts that he was misled by the individual into believing he was not required to appear in Immigration Court on the date assigned and, as a result, an in absentia removal order was issued against him. The Immigration Judge noted that the respondent presented both the motion filed on his behalf and a more detailed motion provided by the individual, who advised the respondent that the more detailed motion was the document that he filed, when he did not. The Immigration Judge determined that "this was a deliberate attempt to deceive." The Immigration Judge found that there was "sufficient

[1] Pursuant to Order No. 7197-2026, dated September 18, 2026, the Attorney General designated the Board's decision in *Matter of K-K-U-J-* (BIA August 27, 2026), as precedent in all proceedings involving the same issue or issues. *See* 8 C.F.R. § 1003.1(g)(3) (2026). Editorial changes have been made consistent with the designation of the case as a precedent.

evidence in this record to suggest [the r]espondent was misled by someone he believed was authorized to represent him before this court, even though it appears this was not the case." The Immigration Judge concluded that this constituted an exceptional circumstance and reopened proceedings pursuant to 8 C.F.R. § 1003.23 (2026).

DHS argues that the Immigration Judge erred in granting the respondent's motion to reopen because both motions for continuance, allegedly prepared by the individual, indicate that the respondent was proceeding pro se and were signed by the respondent, "which belies the respondent's claim that he reasonably believed" that the individual was representing him as an attorney. DHS contends that the circumstances "are not truly exceptional" warranting the exercise of sua sponte authority. DHS argues that, even if the individual presented himself as an attorney, the respondent "failed to meet the 'high standard' established for ineffective assistance of counsel under *Matter of Lozada*[, 19 I&N Dec. 637 (BIA 1988),] and *Matter of Melgar*[, 28 I&N Dec. 169 (BIA 2020)]."

We agree with DHS that the Immigration Judge erred in finding that the respondent's circumstances constitute an exceptional circumstance warranting the exercise of sua sponte authority to reopen the proceedings. *See Matter of G-D-,* 22 I&N Dec. 1132, 1133–34 (BIA 1999) ("[W]e invoke our sua sponte authority sparingly, treating it not as a general remedy for any hardships created by enforcement of the time and number limits in the motions regulations, but as an extraordinary remedy reserved for truly exceptional situations."); *Matter of J-J-,* 21 I&N Dec. 976, 984 (BIA 1997) ("The power to reopen on our own motion is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship."). The respondent's claim that he followed the individual's instruction that he was not required to appear in Immigration Court for his hearing is unreasonable because both motions to continue state that the respondent was filing them as a pro se party, were signed by the respondent, and do not contain the individual's name or signature. *See Jean Louis v. Att'y Gen. U.S.*, 914 F.3d 189, 192 (3d Cir. 2019) (holding that a non-lawyer's bad advice is not an exceptional circumstance required for rescission of an in absentia removal order). Additionally, the respondent did not allege that the individual told him that he was an attorney. We conclude that the respondent failed to show that his circumstance constitutes a truly exceptional situation warranting the exercise of sua sponte authority. *See Matter of Z-R-C-N-,* 29 I&N Dec. 523, 525 (BIA 2026) ("A respondent cannot succeed on her ineffective assistance of counsel claim where the individual she hired was not an attorney and did not hold himself out to be one.").

To the extent that the respondent asserted and the Immigration Judge considered an ineffective assistance of counsel claim, the respondent failed to comply with the procedural requirements under *Matter of Lozada*, 19 I&N Dec. at 639. *See Lu v. Ashcroft*, 259 F.3d 127, 129 (3d Cir. 2001) ("We conclude that the *Lozada* requirements are a reasonable exercise of the Board's discretion . . . .").

ORDER: DHS' appeal is sustained, the Immigration Judge's May 9, 2026, decision is reversed, and the motion to reopen is denied.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to $998 for each day the respondent is in violation. *See* section 274D of the Immigration and Nationality Act ("INA"), 8 U.S.C. §1324d (2024); 8 C.F.R. § 280.53(b)(14) (2026). Further, any respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than 2 years, or both. *See* INA § 276(a), 8 U.S.C. § 1326(a) (2024).