

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
CINCINNATI, OHIO**

FILE NUMBER: [REDACTED])
)
IN THE MATTER OF [REDACTED]) IN REMOVAL PROCEEDINGS
)
)
Respondent)

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act-Nonimmigrant-remained longer than permitted

ON BEHALF OF THE RESPONDENT:
Vanessa Teodoro, Esquire

ON BEHALF OF THE DHS:
Michael Wick, Assistant Chief Counsel

INTERIM ORDER OF THE IMMIGRATION JUDGE

At today's hearing, the parties agreed that the proceedings should be continued to give the respondent the opportunity to seek psychological counseling, before going forward on his asylum request. The respondent through counsel had requested that a competency hearing be conducted, to determine whether the respondent has a mental incompetency. See section 240(b)(3) of the Act; 8 C.F.R. §§1240.4 and 1240.43. There is no provision in the Act for an Immigration Judge to conduct a competency hearing. The emphasis under the statute and regulations is that a person should be allowed to appear on behalf of the respondent, where it is impractical for the respondent to appear because of a mental incompetency. The respondent here has been able to appear for his scheduled hearings, and he is represented by counsel. The test for a fair hearing is whether the respondent is able to participate meaningfully in his removal proceedings. See Matter of Tomas, 19 I&N Dec. 464 (BIA 1987). Respondent's counsel must submit to the Court, on or before October 22, 2008, evidence of the respondent's psychiatric condition, if any, and keep the Court informed of his condition at the time of the merits asylum hearing. See Harries v. Bell, 417 F.3d 631, 636 (6th Cir. 2005)(explaining that the best medical evidence regarding competency is that closest to the time of trial). A written notice for the individual hearing concerning the asylum request will be forthcoming.

DATE:

[REDACTED]
U.S. Immigration Judge