**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*

**Cooper, Mark D., Esq**
**15 Court Square**
**Boston, MA 02108**

**DHS/ICE Office of Chief Counsel - BOS**
**P.O. Box 8728**
**Boston, MA 02114**

**Name: LAUDELINO, JOAO SILVA**

**A 088-268-610**

**Date of this notice: 12/14/2012**

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:
Miller, Neil P.

Userteam: Docket

File: A088 268 610 – Boston, MA

Date: DEC 14 2012

In re: JOAO SILVA LAUDELINO

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Mark D. Cooper, Esquire

ON BEHALF OF DHS: Gwendylan Tregerman
Senior Attorney

APPLICATION: Reinstatement of proceedings

This case was last before us on October 3, 2012, when we administratively closed the proceedings until the parties advise of the outcome of the pending labor certification application on the respondent's behalf. The Department of Homeland Security ("DHS") has filed a motion requesting that the proceedings on appeal be reinstated. The respondent opposes the DHS's motion. The motion will be denied.

We administratively closed the proceedings on October 3, 2012, to await adjudication of the third labor certification application on the respondent's behalf. The DHS asserts that the respondent did not demonstrate that the first labor certification filed on his behalf on April 24, 2001, was approvable when filed. *See* 8 C.F.R. § 1245.10(a)(3) (*approvable when filed* means that the qualifying labor certification application was properly filed, meritorious in fact, and non-frivolous ("frivolous" being defined herein as patently without substance); this determination will be made based on the circumstances which existed at the time the qualifying application was filed).

We stated in our October 3, 2012, order that "[a]ssuming" that the first labor certification application filed on April 24, 2001, was approvable when filed, the respondent is a grandfathered alien for purposes of eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i). We stated this because on appeal the respondent presented evidence which made a prima facie showing that the April 24, 2001, labor certification application was approvable when filed. The respondent submitted an April 13, 2001, letter from a former employer of the respondent which confirmed his qualifying employment between January of 1996 and January of 2001 (Appellate Exh. C). The respondent submitted a May 20, 2003, letter from a Florida state labor certification specialist (Appellate Exh. B) which stated that the review of the labor certification application had been completed and gave advertising and posting instructions to follow.

We emphasize that by denying the DHS's motion to reinstate the proceedings on appeal, we are not ruling on the ultimate merits of any application for adjustment of status the respondent might submit. Upon any future remand the Immigration Judge will be the first to consider the evidence discussed above on the merits.

Accordingly, the following order will be entered.

ORDER: The DHS's motion to reinstate proceedings on appeal is denied and the proceedings remain administratively closed.

FOR THE BOARD