



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: SANCHEZ-GARCIA, ALEJANDRO A 206-550-176

Date of this notice: 11/29/2019

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:
Guendelsberger, John
Grant, Edward R.
Kendall Clark, Molly

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A206-550-176 – Louisville, KY

Date:

NOV 29 2019

In re: Alejandro SANCHEZ-GARCIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel A. Mendoza-Newton, Esquire

ON BEHALF OF DHS: Tracy L. Jent
Assistant Chief Counsel

APPLICATION: Reopening; stay of removal

The respondent, a native and citizen of Mexico, appeals an Immigration Judge's July 9, 2019, decision denying his motion to reopen proceedings. He also seeks a stay of removal. The Department of Homeland Security (DHS) has filed briefs in opposition to the appeal and the request for a stay. The appeal will be sustained, and the record will be remanded for further proceedings.

We review questions of law, discretion, and judgment arising in appeals from decisions of Immigration Judges *de novo*, whereas we review findings of fact in such appeals under a clearly erroneous standard. *See* 8 C.F.R. § 1003.1(d)(3).

The following facts are not in dispute. On March 29, 2019, the Immigration Judge ordered the respondent removed to Mexico. After the 30-day deadline for appealing that decision elapsed, the respondent retained new counsel. On May 9, 2019, new counsel filed a motion for reissuance of the March 29, 2019, decision based on ineffective assistance of counsel. The Immigration Judge denied the motion on May 16, 2019.

On June 27, 2019, the respondent filed the motion to reopen that is the subject of the present appeal. The motion was based on another claim of ineffective assistance of former counsel for failing to perfect a timely appeal from the Immigration Judge's March 29, 2019, decision.

In a summary order dated July 9, 2019, the Immigration Judge denied the motion to reopen. The sole reasoning given by the Immigration Judge for the denial of the motion was: "Motion to Reissue Decision Filed 5/9/19 Is Treated As A Motion to Reopen; Therefore, the instant motion to reopen is time-barred. 8 C.F.R. § 1003.23(b)(4)."

The Immigration Judge's decision on the motion to reopen was erroneous. As an initial matter, the Immigration Judge should not have treated the respondent's motion to reissue as a motion to reopen, as requests for such relief are distinct in nature. By way of example, we reissue a decision in instances where some administrative error at the Board has resulted in a defect of service which, if not corrected, would prevent a party from perfecting a timely appeal or complying with a

Cite as: Alejandro Sanchez-Garcia, A206 550 176 (BIA Nov. 29, 2019)

voluntary departure deadline. In addition, we may generally reissue a decision in order to remedy an ineffective assistance of counsel claim, e.g., where an alien's attorney received notice of our decision but failed to inform the alien of such receipt until after the relevant filing or voluntary departure deadline has passed. By its very nature, a request for reissuance does not constitute a request for further substantive proceedings.

Motions to reopen, on the other hand, are made to reopen a final proceeding for further substantive proceedings based on evidence that was previously unavailable, material, and would likely effect that outcome of the case. *See* section 240(c)(7)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(B); 8 C.F.R. § 1003.23(b)(3); *Matter of Coelho*, 20 I&N Dec. 464, 472 (BIA 1992). It was therefore erroneous for the Immigration Judge to state that the original motion to reissue constituted a motion to reopen.

The Immigration Judge also erred in deeming the motion to reopen time-barred. The respondent was required to file his motion to reopen within 90 days of the entry of the Immigration Judge's March 29, 2019, order. The motion to reopen was filed on the ninetieth day, and was therefore timely.

For the foregoing reasons, the appeal is sustained, and the record is remanded to the Immigration Judge for further consideration of the motion to reopen on its merits. Upon remand, the parties may offer additional evidence and argument. The following orders will be entered.

ORDER: The appeal is sustained, and record is remanded for further proceedings consistent with this order and for the entry of a new decision.

FURTHER ORDER: The request for a stay of removal is denied as moot.



FOR THE BOARD