



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: H [REDACTED]-S [REDACTED], M [REDACTED] A [REDACTED]... A [REDACTED] 759

Date of this notice: 12/13/2017

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

User team: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 759 – Miami, FL

Date:

DEC 13 2017

In re: M [REDACTED] A [REDACTED] [REDACTED] S [REDACTED]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Michael A. Areizaga, Esquire

APPLICATION: Reopening

The final order in these proceedings was entered by the Board on December 20, 2004, when we dismissed the respondent's appeal. The respondent filed an untimely motion to reopen his proceedings on May 30, 2017. *See* sections 240(c)(7)(A), (C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(7)(A), (C); 8 C.F.R. § 1003.2(c)(2). The respondent does not dispute the untimeliness of his motion, but requests that the Board exercise its sua sponte authority to reopen his proceedings in the interests of justice. *See* 8 C.F.R. § 1003.2(a). The Department of Homeland Security has not opposed the motion. The motion will be granted.

The respondent was previously denied adjustment of status under NACARA because he was found to be inadmissible under section 212(a)(1)(A)(i) of the Act due to his HIV-positive status. However, as of January 4, 2010, HIV infection no longer renders an applicant inadmissible under section 212(a)(1)(A)(i) of the Act, as the regulation at 42 C.F.R. § 34.2(b) was amended to remove HIV infection from the definition of "communicable disease of public health significance." 74 Fed. Reg. 56547 (November 2, 2004). On November 24, 2009, the United States Citizenship and Immigration Services (USCIS) issued a memorandum waiving the filing deadline for motions to reopen in cases denied solely based on HIV infection on or after July 2, 2009, the date of the proposed rule. *See* USCIS, "Public Law 110-293, 42 CFR 34.2(b), and Inadmissibility Due to Human Immunodeficiency Virus (HIV) Infection; Revision to Adjudicator's Field Manual (AFM) Chapters 24.2, 40.1, 41.3, and Appendix 41-1, 4102 and 41-3 (AD 10-03)" (November 24, 2009).

The respondent now seeks to reopen and remand this matter to the Immigration court to renew his application for adjustment of status under section 202 of NACARA before the Immigration Judge based on a fundamental change of the law. Based on the evidence of a fundamental change in law that impacts on the respondent's ability to adjust status under section 202 of the Nicaraguan Adjustment and Central American Relief Act, Publ. L. 105-100 (NACARA), we will reopen the proceedings. *See* 8 C.F.R. § 1003.2(a); *see also Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

Accordingly, the record will be remanded to the Immigration Judge for further consideration of the respondent's removability in light of the change in law. Accordingly, the following orders will be entered.

ORDER: The respondent's motion to reopen is granted.

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



FOR THE BOARD