



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: VALENCIA-MATA, JOSE

A 095-717-786

Date of this notice: 4/19/2019

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:
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

File: A095-717-786 – Tacoma, WA

Date:

APR 19 2019

In re: Jose VALENCIA-MATA

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Jill Nedved, Esquire

APPLICATION: Reopening

ORDER:

On February 4, 2019, the respondent, a native and citizen of Mexico, submitted a timely motion to reopen proceedings in which the Board dismissed his appeal on January 16, 2019. He also seeks a stay of removal. The Department of Homeland Security has not responded to the motion. The record is remanded.

The Board upheld the Immigration Judge's finding that the respondent was not eligible for cancellation of removal as he did not show that a 2006 conviction was not for a controlled substance violation (IJ at 2-4; BIA at 1). The respondent seeks reopening as he reports, and has submitted evidence showing, that on January 29, 2019, a California Superior Court granted his request to withdraw his guilty plea underpinning his 2006 conviction of a drug offense under Cal. Health & Safety Code § 11350(a) pursuant to Cal. Penal Code § 1473.7. *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (noting that a motion to reopen proceedings shall not be granted unless the evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing). Therefore, this conviction no longer renders the respondent ineligible for cancellation of removal. *Young Sun Shin v. Mukasey*, 547 F.3d 1019, 1025 (9th Cir. 2008) (a respondent who seeks to reopen proceedings bears a "heavy burden of proving that if proceedings were reopened, the new evidence would likely change the result").

Given the vacated conviction, we will remand the proceedings to the Immigration Judge for further consideration of the respondent's cancellation of removal application. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (convictions eliminated for immigration purposes when vacated based on procedural or substantive defect). Accordingly, the motion and stay request are granted. The record will be remanded to the Immigration Judge for further consideration of the respondent's application for cancellation, and any other form of relief for which he may be eligible.

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


FOR THE BOARD

Cite as: Jose Valencia-Mata, A095 717 786 (BIA April 19, 2019)