



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 20530

**Cruz, Frances M., Esquire
Colindres & Cruz, Attys at Law
2508 Thomas Avenue, #227
Dallas, TX 75201**

**DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324**

Name: MARTINEZ ALVAREZ, JUAN

A 200-759-323

Date of this notice: 5/29/2014

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
Adkins-Blanch, Charles K.
Manuel, Elise

TranC
User team: Docket

For more unpublished BIA decisions, visit www.irac.net/unpublished

CS

Falls Church, Virginia 20530

File: A200 759 323 – Dallas, TX

Date: MAY 29 2014

In re: JUAN MARTINEZ-ALVAREZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Frances M. Cruz, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's June 28, 2012, decision denying his motion to reopen proceedings. The Department of Homeland Security (DHS) has not filed an appeal brief. The appeal will be sustained, and the record will be remanded for further proceedings.

We review the findings of fact, including determinations of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether or not the parties have met the relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On February 6, 2012, the Immigration Judge denied as abandoned the respondent's application for adjustment of status because the application was not filed by the court-imposed deadline of February 1, 2012. By separate order, also dated February 6, 2012, the Immigration Judge denied a motion to withdraw as counsel and a request for additional time to file applications, which was filed on February 3, 2012. On April 20, 2012, the respondent filed a motion to reopen sua sponte pursuant to 8 C.F.R. § 1003.23, which the Immigration Judge denied on May 14, 2012, for failure to pay the filing fee for motions. A subsequent motion to reopen was filed on June 20, 2012, which the Immigration Judge denied on June 28, 2012, concluding that the motion was untimely and number-barred, and determining that there was an insufficient basis for sua sponte reopening. The respondent argues on appeal that the Immigration Judge erred in denying his request for sua sponte reopening.

"An Immigration Judge may upon his or her motion at any time . . . reopen or reconsider any case in which he or she has made a decision. See 8 C.F.R. § 1003.23(b). The power to reopen or reconsider is limited to exceptional situations. See *Matter of J-J*, 21 I&N Dec. 976 (BIA 1997).

We find that sua sponte reopening is appropriate in this case. Although the respondent did not fully comply with the evidentiary requirements for asserting a claim of ineffective assistance of counsel outlined in *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988),¹ we note

¹ Under *Matter of Lozada*, *supra*, a motion based upon a claim of ineffective assistance of counsel should be supported by an affidavit, reflect whether a complaint had been filed with the appropriate disciplinary authorities, and include a response to the allegations by former counsel or report counsel's failure or refusal to respond. *Matter of Lozada*, *supra*, at 639.

that he did submit an affidavit outlining the circumstances surrounding his representation by the Mathur Law Offices in this case, as well as his attorney fee agreement with the Mathur Law Offices, invoices and case notations from the firm, and attorney email correspondence.

The motion to withdraw reflects that the respondent hired the Mathur Law Offices, and was assigned Cristobal Colindres as his attorney. The motion further states that Mr. Colindres ended his employment at the Mathur Law Offices on September 19, 2011, and that after his departure, he notified the firm that motions to substitute as counsel should be filed in all of his pending cases, including the respondent's case, and that if pending filing deadlines were not met, his clients could have their claims denied as abandoned. In requesting to withdraw from the case and in seeking additional time for the respondent to file his application, Mr. Colindres noted that he received information from a court clerk on February 3, 2012, that the Mathur Law Offices had filed motions to substitute as counsel in all of his pending cases *except* the respondent's case. Email correspondence between Mr. Colindres and representatives at the Mathur Law Offices, filed with the motion to withdraw and with the motion to reopen, confirms that in January 2012, before the filing deadline, Mr. Colindres inquired about the status of the motions to substitute and was told, incorrectly, that they had been filed in all of his pending cases. The respondent states in his affidavit that he last met with Attorney Mathur at the Mathur Law Offices on November 18, 2011, and that while he was informed that Mr. Colindres no longer worked for the firm, he was not informed about the need to file his applications with the court by February 1, 2012.

The evidence in the record therefore reflects that the respondent's legal representation with the Mathur Law Offices was in transition shortly before the filing deadline, and that the Mathur Law Offices did not file a motion to substitute counsel after Mr. Colindres left the firm or submit the respondent's application by the February 1, 2012, deadline. Based on the particular circumstances of this case, we thus conclude that sua sponte reopening is appropriate so that the respondent may have his application for adjustment of status considered on the merits. *See Matter of J-J-*, supra. Accordingly, the appeal will be sustained, and the record will be remanded for further proceedings.¹

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

¹ We note that on June 15, 2012, the Secretary of the Department of Homeland Security (DHS) announced that certain young people, who are low law enforcement priorities, will be eligible for deferred action. The respondent may be eligible for deferred action. Information regarding DHS' Consideration of Deferred Action for Childhood arrivals may be obtained on-line (www.uscis.gov or www.ice.gov) or by phone on USCIS hotline at 1-800-3755283 or ICE hotline at 1-888-351-4024.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1100 COMMERCE ST., ROOM 404
DALLAS, TX 75242

CRUZ, FRANCES M
2508 THOMAS AVE, STE 227
DALLAS, TX 75201

IN THE MATTER OF
MARTINEZ ALVAREZ, JUAN

FILE A 200-759-323

DATE: Jul 2, 2012

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
1100 COMMERCE ST., ROOM 404
DALLAS, TX 75242

X OTHER: JUDGE'S DECISION - MOTION TO REOPEN (DENIED)

OC7

COURT CLERK
IMMIGRATION COURT

FF

CC: GONZALEZ, ROSLYN
125 E. HWY 114, STE 500
IRVING, TX, 75062

United States Department of Justice
Executive Office of Immigration Review
United States Immigration Court
Dallas, Texas

In Re: Juan Martinez

Case No. A200-759-323

ORDER

This matter is once again before the Court pursuant to a Motion to Re-Open. For the reasons set forth below, the motion will be **DENIED**.

The Respondent last filed a Motion to Re-Open on April 20, 2012. That Motion to Re-Open was denied by written order on May 14, 2012.

The most recent Motion to Re-Open was filed June 20, 2012.

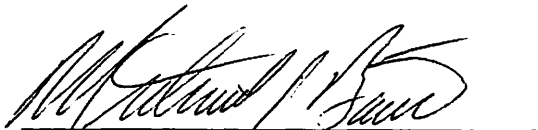
The June 20, 2012 Motion to Re-Open is number barred. A Respondent may only file one Motion to Re-Open. 8 C.F.R. 1003.23(b)(1).

The June 20, 2012 Motion to Re-Open is temporally barred. The Court issued a written order of removal on February 6, 2012. The current Motion to Re-Open is filed more than 90 days beyond the date of the final order and is therefore barred. 8 C.F.R. 1003.23(b)(1).

To the extent that Respondent asks this Court to bypass the multiple mandatory bars in this matter and use its *sua sponte* authority to re-open proceedings by alleging ineffective assistance of counsel on his prior attorney, the Court will decline to do so. There has been no effort whatsoever to comply with Matter Of Lozada, 19 I&N Dec. 637 (BIA 1988).

The June 20, 2012 Motion to Re-Open is DENIED.

This 28th day of June, 2012.



Michael P. Baird
United States Immigration Judge