



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: PATEL, NISHANTKUMAR

A 073-546-027

Date of this notice: 7/11/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

tham:W
User team: Docket

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Falls Church, Virginia 22041

File: A073 546 027– Atlanta, GA

Date:

JUL 11 2017

In re: NISHANTKUMAR PATEL

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Eli A. Echols, Esquire

ON BEHALF OF DHS: Arkesia Jenkins
Assistant Chief Counsel

APPLICATION: Reconsideration; reopening

This matter was last before the Board on January 17, 2017, when we dismissed the appeal filed by the respondent and his family members. On February 16, 2017, the respondent filed a motion to reconsider.¹ The motion included additional evidence and will also be considered, therefore, as a motion to reopen. The motion is timely insofar as it requests both reconsideration and reopening. The Department of Homeland Security has filed an opposition to reconsideration but has not addressed the respondent's new evidence. The record will be reopened and remanded for further proceedings.

A motion to reconsider is a request that the Board reexamine its decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case that was overlooked. *See* section 240(c)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b); *Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

A motion to reopen must state the new facts to be considered at the reopened hearing and be supported by evidence that is material, that was previously unavailable, and that demonstrates prima facie eligibility for the relief sought. *See* section 240(c)(7) of the Act; 8 C.F.R. § 1003.2(c); *see also INS v. Abudu*, 485 U.S. 94 (1988). An alien who seeks to reopen proceedings to pursue relief bears the heavy burden of showing that if proceedings were reopened with all the attendant delays, the new evidence offered would likely change the result in the case. *See Matter of Coelho*, 20 I&N Dec. 464, 472-73 (BIA 1992).

We find no error in our last decision relating to the respondent's request for administrative closure or a remand to the Immigration Judge. Nevertheless, the respondent has now submitted

¹ The respondent's family members are not parties to this motion.

new evidence that supports reopening. Under *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002), proceedings may be reopened, under certain circumstances, for consideration of an application to adjust status based on a marriage to a United States citizen that was entered into during proceedings, even though the Form I-130 visa petition filed by the respondent's spouse is still pending. The motion must be timely, there must be no procedural bar to adjustment, and the respondent must submit clear and convincing evidence that his or her marriage is bona fide.

The respondent has submitted evidence that he has married a United States citizen and that she filed a Form I-130 visa petition on the respondent's behalf. The visa petition appears to be pending with U.S. Citizenship and Immigration Services (USCIS). The respondent has submitted with his motion evidence concerning the bona fides of his marriage, including his marriage license, photographs, documentation of joint bank accounts, and a lease reflecting that the respondent and his wife reside at the same address. Furthermore, the respondent has established that he was granted deferred action for childhood arrivals (DACA) and that after the DACA grant, he obtained advance parole, left the United States pursuant to the grant of advance parole, and then was paroled back into the United States. The respondent does not appear to have any bars to adjustment.

Accordingly, we will grant the respondent's motion insofar as he seeks reopening and will remand the record to the Immigration Judge for further proceedings in which to consider his application for adjustment of status.

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

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



FOR THE BOARD