



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MARTINEZ, MONICA MARISOL

A 200-118-340

Date of this notice: 4/12/2018

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Mann, Ana
Kelly, Edward F.
Snow, Thomas G

Userteam: Docket

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Falls Church, Virginia 22041

File: A200 118 340 – Dallas, TX

Date:

APR 12 2018

In re: Monica Marisol MARTINEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jonathan Myles Kaufman, Esquire

APPLICATION: Reopening; termination

The respondent has appealed the Immigration Judge's November 22, 2017, decision that denied the respondent's motion to reopen and terminate proceedings. The appeal will be sustained and the motion will be granted.

We review the findings of fact, including the determination 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 issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We conclude that the respondent has sufficiently demonstrated an exceptional situation warranting sua sponte reopening of these removal proceedings. *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). In particular, the respondent has submitted evidence that on June 9, 2017, she became a lawful permanent resident of the United States following adjustment of status through the provisions of section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U) ("U-visa").¹ Accordingly, the following orders shall be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The motion to reopen is granted, the proceedings are reopened and hereby terminated.



FOR THE BOARD

¹ We acknowledge that the evidence submitted indicates that the respondent was granted lawful permanent resident status under a different alien registration number (A205-231-894). However, the evidence also establishes that prior to granting her lawful status, the Department of Homeland Security (DHS) was aware that the respondent had an outstanding order of removal under the instant alien registration number. In addition, the DHS did not submit a response to the respondent's underlying motion to reopen or a brief on appeal. *See* 8 C.F.R. § 1003.2(g)(3).

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DALLAS, TEXAS**

IN THE MATTER OF:)	IN REMOVAL PROCEEDINGS
)	
MARTINEZ, Monica Marisol)	A 200-118-340
)	
RESPONDENT)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA or Act), as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATION: Motion to Reopen and Terminate Removal Proceedings

ON BEHALF OF RESPONDENT:

Jonathan Kaufman, Esq.
Law Offices of Jonathan M. Kaufman
220 Montgomery St., Ste. 689
San Francisco, CA 94104

**ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:**

Paul B. Hunker III, Esq.
Chief Counsel - DHS/ICE
125 E. John Carpenter Freeway, Suite 500
Irving, TX 75062

WRITTEN DECISION OF THE IMMIGRATION JUDGE

This matter is before the Court pursuant to Respondent's motion to reopen, which was filed on September 14, 2017. Respondent requests the Court reopen and terminate her removal proceedings as the U.S. Citizenship and Immigration Services has admitted Respondent as a lawful permanent resident based on an approved U visa petition. The Court will deny Respondent's motion as set forth below.

A motion to reopen shall state the new facts and evidence to be presented at a reopened hearing. 8 C.F.R. § 1003.23(b)(3). The evidence must be material, and the respondent must show that it was unavailable and could not have been discovered or presented at the previous hearing. *Id.*; *Matter of S-Y-G-*, 24 I&N Dec. 247, 252 (BIA 2007). The motion must be filed within 90 days,

or within 180 days if “exceptional circumstances” are shown, of the date of entry of a final administrative order of removal. 8 C.F.R. § 1003.23(b)(1). A motion to reopen proceedings for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation. 8 C.F.R. §§ 1003.23(b)(3), 1208.4(b)(3)-(4). A respondent must also “make a prima facie showing that there is a reasonable likelihood that the relief sought would be granted at the reopened hearing.” *Ramos v. Lynch*, 622 F. App’x. 432, 433 (5th Cir. 2015) (quoting *Marcello v. INS*, 694 F.2d 1033, 1035 (5th Cir. 1983)). Where the motion has not been timely filed, an exception to the time limitation must apply or the motion will be denied. *See* 8 C.F.R. § 1003.23(b)(4).

Here, Respondent’s motion is time barred. Respondent was ordered removed *in absentia* on February 6, 2006. She filed a motion to reopen based on an approved U visa on September 14, 2017, more than eleven years after the entry of the final administrative order of removal. The Court finds no applicable exceptions to the time limitations, such as a joint motion with the Government. *See* 8 C.F.R. § 1003.23(b)(4)(iv). Consequently, Respondent’s motion will be denied as untimely.

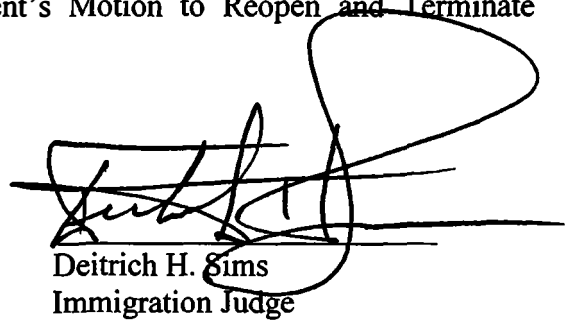
An immigration judge may reopen proceedings *sua sponte* in exceptional circumstances warranting the exercise of such limited discretionary authority. *See, e.g., Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999) (*sua sponte* authority should be used “sparingly, treating it not as a general remedy for any hardships created by enforcement of the time and number limited in the motions regulations, but as an extraordinary remedy reserved for truly exceptional situations”). Considering the totality of the circumstances, the Court finds Respondent has not presented a truly exceptional situation that would warrant the extraordinary remedy of *sua sponte* reopening and declines to exercise its *sua sponte* authority to reopen proceedings.

Accordingly, the following order will be entered:

ORDER

IT IS HEREBY ORDERED that Respondent's Motion to Reopen and Terminate Removal Proceedings is **DENIED**.

Date: 22nd day of November, 2017
Dallas, TX



Deitrich H. Sims
Immigration Judge