



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: ZORTO-RAMOS, OSNI EDUARDO A 098-284-864

Date of this notice: 4/1/2019

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:
Kelly, Edward F.
Mann, Ana
Liebmann, Beth S.

Userteam: Docket

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Falls Church, Virginia 22041

File: A098-284-864 – San Antonio, TX

Date:

APR - 1 2019

In re: Osni Eduardo ZORTO-RAMOS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sabrina R. Damast, Esquire

ON BEHALF OF DHS: Nicholas D. Gordon
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals the decision of the Immigration Judge, dated November 1, 2018, denying his motion to reopen. The Department of Homeland Security is opposed to the respondent's appeal.

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).

Considering the totality of the circumstances presented in this case, we conclude that these removal proceedings should be reopened sua sponte. *Matter of J-J*, 21 I&N Dec. 976 (BIA 1997). Although the respondent's motion was untimely, we consider the fact that he was ordered removed from the United States as a child and subsequently held deferred action to significantly mitigate the untimeliness of his motion. Moreover, his claims to relief from removal, based upon a fear of persecution or torture in Honduras due to his status as a homosexual, are supported by documentary evidence. He has also presented significant evidence to demonstrate strong humanitarian factors which support reopening. He has also presented evidence on appeal which confirms that, since the time of the Immigration Judge's decision to deny his motion, his sole conviction for a criminal offense has been vacated.

Any claim that the Notice to Appear is defective is without merit. *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). Nonetheless, for the reasons set forth above, we conclude that the respondent has demonstrated an exceptional situation justifying sua sponte reopening. As such, reopened removal proceedings are warranted in order to provide the respondent with a renewed opportunity to appear before an Immigration Judge to show why he should not be removed from the United States.

At the present time, we express no opinion regarding the underlying merits of the respondent's claims to relief or the ultimate outcome of these proceedings.

For the reasons set forth above, the following order will be entered.

ORDER: The respondent's appeal is sustained, the order of removal, entered in absentia on November 17, 2004, is vacated, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings and the entry of a new decision.



FOR THE BOARD