



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041*

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**DHS/ICE Office of Chief Counsel - NEW
P.O. Box 1898
Newark, NJ 07101**

Name: MADERA, BETANIA GENEROSA

A041-592-043

Date of this notice: 1/5/2011

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

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**MADERA, BETANIA GENEROSA
A041-592-043
30-35 HACKENSACK AVE
KEARNEY, NJ 07302**

**DHS/ICE Office of Chief Counsel - NEW
P.O. Box 1898
Newark, NJ 07101**

Name: MADERA, BETANIA GENEROSA

A041-592-043

Date of this notice: 1/5/2011

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

**Donna Carr
Chief Clerk**

Enclosure

**Panel Members:
Kendall-Clark, Molly**

Falls Church, Virginia 22041

File: A041 592 043 - Newark, NJ

Date: JAN 05 2011

In re: BETANIA GENEROSA MADERA

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Thomas E. Moseley, Esquire

APPLICATION: Reopening

ORDER:

The motion is granted. The final administrative order of removal in these proceedings was entered by this Board on March 31, 2010. The respondent, a native and citizen of the Dominican Republic, has now submitted a third motion accompanied by evidence that the conviction underlying these removal proceedings has been vacated by the state court due to a pre conviction defect in the criminal proceedings, i.e., search warrant issue (Resp. Motion at Tab B, Transcript of Proceedings dated June 29, 2010, at 4). The Department of Homeland Security has not responded to or opposed the pending motion.

We will reopen these proceedings *sua sponte* and remand the record to the Immigration Judge for further consideration of the respondent's removability and or eligibility for relief in light of the new evidence proffered with the respondent's motion. *See* 8 C.F.R. § 1003.2(a); *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); *see also Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (finding that a conviction vacated for procedural or substantive defects in the underlying criminal proceedings is no longer valid for immigration purposes); *Pinho v. Gonzales*, 432 F.3d 193, 195, 215 (3d Cir. 2005) (approving of the Board's distinction between "convictions vacated for rehabilitative purposes and those vacated because of underlying defects in the criminal proceedings," and holding that in determining the basis for a vacatur order, the agency must look first to the order itself and if the order does not provide a clear statement of reasons, the agency may then look to the record before the court when the vacatur was issued); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000) (according full faith and credit to a State court's vacation of a conviction under a statute that was neither an expungement nor a rehabilitative statute).

FURTHER ORDER: The motion to reopen is granted.

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



FOR THE BOARD