



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: RAMIREZ CALDERON, ROY AL...**

**A 200-423-316**

**Date of this notice: 3/9/2017**

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

Sincerely,

Cynthia L. Crosby  
Acting Chief Clerk

Enclosure

Panel Members:  
Kendall Clark, Molly

USCIS  
User team: Docket

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Falls Church, Virginia 22041

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File: A200 423 316 – Boston, MA

Date:

**MAR - 9 2017**

In re: ROY ALBERTO RAMIREZ-CALDERON

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Megan E. Kludt, Esquire

APPLICATION: Reopening

These proceedings were completed on October 22, 2013, when the respondent accepted voluntary departure prior to completion of proceedings. *See* section 240B(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a). Thereafter, the respondent sought to reopen proceedings based on a marriage to a United States citizen. The Immigration Judge denied reopening and the Board dismissed the appeal. Thereafter, the Board denied two separate motions and the First Circuit denied a petition for review.

The respondent has now filed an untimely, number-barred motion to reopen. *See* section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2). He has also filed a motion for a stay. The respondent contends that the time and number bars on reopening should be tolled due to ineffective assistance of former counsel. The respondent has been diligently pursuing his rights since his grant of voluntary departure in October of 2013. *Chedid v. Holder*, 573 F.3d 33, 36 (1st Cir. 2009)(citations omitted). For the following reasons, the prior decisions in this proceeding are vacated, and the record remanded for further proceedings.

The respondent has complied with the requirements of *Matter of Assaad*, 23 I&N Dec. 553 (BIA 2003) and *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The respondent's former attorney states that he informed the respondent of the 90 day deadline for filing a motion to reopen. However, in December 2013, prior to the expiration of the 90 day deadline for reopening on January 20, 2014, and prior to the expiration of the time within which to voluntarily depart on February 16, 2014, the respondent indicated to his former attorney that he was planning to marry next month. The respondent inquired whether he was "still in time". *See* Motion, A-6 at 29.

The respondent was told via text that he had time if he married before February 19, 2014 (Motion, A-6 at 29).<sup>1</sup> But to file a timely motion to reopen in compliance with *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002), the respondent had to marry, file an I-130 visa petition, and file a motion to reopen before January 20, 2014. The respondent asserts that he would have married prior to the January motion deadline but for the incorrect advice, as opposed to waiting until February 2, 2014.

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<sup>1</sup> The respondent's former attorney does not deny that he sent the texts.

Cite as: Roy Alberto Ramirez-Calderon, A200 423 316 (BIA March 9, 2017)

While the respondent's former attorney may have informed the respondent of the 90 day deadline for filing a motion to reopen, his text mistakenly advised the respondent of the voluntary departure deadline as opposed to the 90 day deadline for filing the motion to reopen.

Given our review of the record, including the evidence presented regarding to the bona fides of the marriage, we will grant the motion to reopen, vacate the prior decisions in this proceeding, and remand the record for further proceedings in accordance with this decision. The following orders will be granted.

ORDER: The motion to reopen is granted and the prior decisions in this proceeding are vacated.

FURTHER ORDER: The record is remanded for further proceedings in accordance with this decision.

  
FOR THE BOARD