



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: PEGUERO-CRUZ, RAMON

A 029-119-039

Date of this notice: 7/27/2020

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:
Greer, Anne J.
Wilson, Earle B.
Swanwick, Daniel L.

Userteam: Docket

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Falls Church, Virginia 22041

File: A029-119-039 – Boston, MA

Date:

JUL 27 2020

In re: Ramon PEGUERO-CRUZ a.k.a. Raymond Peguero

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Randy Olen, Esquire

APPLICATION: Reopening; termination


This case was previously before the Board on September 29, 2004, when we denied the respondent's untimely and number-barred motion to reconsider. On December 31, 2018, the respondent filed the instant motion to reopen with the Board. The Department of Homeland Security (DHS) has not responded to the motion. The motion will be granted, and proceedings will be terminated.

The respondent does not contest that his motion is untimely and number-barred (Respondent's Mot. at 1). *See* sections 240(c)(7)(A), (C)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Instead, the respondent asserts that the conviction which served as the basis for the Immigration Judge's deportation order was vacated warranting sua sponte reopening and termination in the interests of justice (Respondent's Mot. at 3-4; Exh. 1). In support of these assertions, the respondent submits state court records which indicate that, on December 6, 2018, the Rhode Island Superior Court vacated his 1993 conviction for possession of a controlled substance pursuant to Rhode Island Gen. Laws § 21-28-4.01(C)(1)(a) (Respondent's Mot. at 8). The court's decision was premised upon deficient assistance of counsel under Rhode Island Gen. Laws § 10-9.1-1, rather than some form of post-conviction relief (Respondent's Mot. at 5-8).

Considering the totality of circumstances presented in the respondent's motion, the proceedings are reopened and terminated on our own motion under the provisions of 8 C.F.R. § 1003.2(a). *See Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). The uncontested evidence presented shows that the underlying conviction which served as the sole basis for the respondent being subject to deportation has been vacated due to a defect in the criminal proceedings. As such, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. *See Rumierz v. Gonzales*, 456 F.3d 31, 34-35 (1st Cir. 2006) (a vacated conviction is no longer a "conviction" within the meaning of the immigration laws only "if a court with jurisdiction vacates [the] conviction based on a defect in the underlying criminal proceedings"); *Herrera-Inirio v. INS*, 208 F.3d 299 (1st Cir. 2000); *Matter of Thomas and Thompson*, 27 I&N Dec. 674 (A.G. 2019) (citing *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), *rev'd on other grounds*, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006)).

Accordingly, the following order is entered.

ORDER: The motion is granted and the respondent's deportation proceedings are terminated without prejudice.



FOR THE BOARD