



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: CLARKE, DEMAR LAVANDE

A 200-300-766

Date of this notice: 5/27/2020

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Foote, Megan E.

Userteam: Docket

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Falls Church, Virginia 22041

File: A200-300-766 – Batavia, NY

Date:

MAY 27 2020

In re: Demar Lavande CLARKE

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Ryanne Guy Konan, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Jamaica, is subject to a final administrative order of removal dated October 30, 2019. On January 22, 2020, the respondent filed this timely motion to reopen the removal proceedings. Section 240(c)(7)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C) (2018). The Department of Homeland Security has not responded to the motion. The motion will be granted and the record will be remanded.

The respondent was ordered removed pursuant to section 237(a)(1)(D)(i) of the Act, 8 U.S.C. § 1227(a)(1)(D)(i), as an alien whose conditional permanent resident status was terminated. However, his motion to reopen is accompanied by a copy of a Notice of Action (Form I-797) reflecting that the DHS approved his application for a waiver under section 216(c)(4) of the Act, 8 U.S.C. § 1186a(c)(4), on December 30, 2019 (MTR, Exh. D). Such a waiver invalidates a section 237(a)(1)(D)(i) removal charge. Section 237(a)(1)(D)(ii) of the Act. Accordingly, the proceedings will be reopened and the record remanded.

On remand, the Immigration Judge shall confirm whether the DHS has approved the respondent's application for a section 216(c)(4) waiver and, if it has, shall dismiss the charge under section 237(a)(1)(D)(i) of the Act and enter such further orders as may thereafter be appropriate. The following orders shall be issued.

ORDER: The respondent's motion to reopen is granted and the order of removal is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing decision and for entry of a new decision.



FOR THE BOARD