



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: BENNETT, LEON DAVE**

**A 037-338-830**

**Date of this notice: 2/1/2018**

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:  
Grant, Edward R.

RussellH  
User team: Docket

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Falls Church, Virginia 22041

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File: A037 338 830 – Buffalo, NY

Date: **FEB 01 2018**

In re: Leon Dave BENNET a.k.a. Leon Black a.k.a. Black Bennet a.k.a. Keith Addison a.k.a. Delroy Brown a.k.a. Leon Dave Blacker a.k.a. Blacker Bennet a.k.a. Dave Bennet

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Siana J. McLean, Esquire

APPLICATIONS: Reopening; termination of proceedings; stay of removal

This case was last before us on June 7, 2016, when we entered a final administrative order dismissing the respondent's appeal. On June 19, 2017, the respondent submitted the instant motion to reopen pursuant to 8 C.F.R. § 1003.2. He requests termination of his proceedings and a stay of removal. The Department of Homeland Security (DHS) has not responded to the motion. The motion to reopen will be granted, and the record will be remanded to the Immigration Judge for further proceedings. The respondent's termination and stay requests are denied.

The respondent, a native and citizen of Jamaica, requests reopening to apply for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a), for lawful permanent residents (LPR). The record reflects that the respondent was previously found to be ineligible for such relief based on his 1986 New York third degree felony conviction for criminal possession of a weapon and his 1997 North Carolina aggravated felony conviction for possession of cocaine with intent to sell or deliver.

The respondent offers evidence that on June 13, 2017, a North Carolina state court set aside his 1997 conviction based on a finding of ineffective assistance of counsel. *See* Exh. A at 1; Exh. B at 2-4. The respondent argues that he no longer stands convicted of a controlled substance offense or an aggravated felony, and that his remaining conviction is not a bar to eligibility for LPR cancellation of removal. *See* Motion at 2-3. He contends that he merits such relief in the exercise of discretion, and that sua sponte reopening is warranted. The respondent also contends that his remaining conviction for criminal possession of a loaded firearm may have involved an antique firearm, meaning that it is not a removable offense and that his proceedings should be terminated. *See* Supplement to Motion at 1-6.

The record reflects that the respondent conceded removability under section 237(a)(2)(C) of the Act based on the firearms conviction. *See* Tr. at 16; Exh. 1 at 3. We find that the issue of removability under that section has been waived.<sup>1</sup>

<sup>1</sup> As the respondent conceded removability based on his firearms offense, we find no reason to address his argument that it may not be a removable offense if it was a loaded antique firearm under New York state law, or his assertion that his proceedings should be terminated for lack of jurisdiction. *See* Supplemental Motion at 3.

The respondent's 1986 felony firearms possession conviction is not a statutory bar to his eligibility for LPR cancellation of removal under section 240A(d)(1) of the Act. *See Matter of Campos-Torres*, 22 I&N Dec. 1289 (BIA 2000) (a firearms offense that renders an alien removable under section 237(a)(2)(C) of the Act, 8 U.S.C. § 1227(a)(2)(C), is not one "referred to in section 212(a)(2)" of the Act). Therefore, although the respondent remains subject to removal as an alien convicted of a firearms violation, the applicability of this ground of removability does not bar him from applying for LPR cancellation of removal.

The respondent's evidence reflects that he is a 51-year-old unmarried father of adult United States citizen children, that he has been employed and paid taxes during some recent years, that he has been a member of a church since 2012, and that he assists his United States citizen father in the running of his business. *See Exhs. C-H.*

Although the respondent's motion to reopen has not been timely filed, we find that it was filed within a reasonable time after our decision, and the fact that the disqualifying conviction for his application for cancellation of removal under section 240(A)(a) has been vacated presents an exceptional situation that warrants the exercise of our discretion to reopen sua sponte. *See* 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2); *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Accordingly, the motion to reopen will be granted and the record will be remanded to the Immigration Judge for further proceedings. The respondent's termination and stay requests will be denied.

ORDER: The motion to reopen is granted, and the record is remanded to the Immigration Judge for further proceedings.

FURTHER ORDER: The respondent's requests for termination of his proceedings and a stay of removal are denied.



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FOR THE BOARD