



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

---

*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530*

**Monique Carreras-Amadeo, Esq.  
1801 E. Colonial Dr., Suite 102  
Orlando, FL 32803**

**DHS LIT./York Co. Prison/YOR  
3400 Concord Road  
York, PA 17402**

**Name: AVALOS-AVALOS, JUAN LUIS**

**A 205-834-943**

**Date of this notice: 12/31/2013**

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:  
Adkins-Blanch, Charles K.  
Guendelsberger, John  
Hoffman, Sharon

yungc  
Userteam: Docket

For more unpublished BIA decisions, visit [www.irac.net/unpublished](http://www.irac.net/unpublished)



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

---

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530

**AVALOS-AVALOS, JUAN LUIS  
A205-834-943  
YORK COUNTY  
3400 CONCORD ROAD  
YORK, PA 17402**

**DHS LIT./York Co. Prison/YOR  
3400 Concord Road  
York, PA 17402**

**Name: AVALOS-AVALOS, JUAN LUIS**

**A 205-834-943**

**Date of this notice: 12/31/2013**

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  
Chief Clerk

Enclosure

Panel Members:  
Adkins-Blanch, Charles K.  
Guendelsberger, John  
Hoffman, Sharon

yungc  
Userteam: Docket

Immigrant & Refugee Appellate Center | [www.irac.net](http://www.irac.net)

Falls Church, Virginia 20530

---

File: A205 834 943 – York, PA

Date: DEC 31 2013

In re: JUAN LUIS AVALOS-AVALOS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Monique Carreras-Amadeo, Esquire

ON BEHALF OF DHS: Jeffrey T. Bubier  
Senior Attorney

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, appeals the decision of the Immigration Judge, dated August 21, 2013, denying his motion to reopen. The Department of Homeland Security is opposed to the respondent's appeal. The record will be remanded to the Immigration Judge for the entry of a new decision adjudicating the respondent's motion to reopen.

These removal proceedings concluded when, on April 29, 2013, the Immigration Judge granted the respondent's request to voluntarily depart the United States on or before August 27, 2013. See section 240B(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a). On August 20, 2013, the respondent filed his motion to reopen.<sup>1</sup> From a review of the record, it appears that the respondent is requesting that the Immigration Judge reopen and administratively close or terminate these proceedings in order to allow him to request that United States Citizenship and Immigration Services grant his Application for Provisional Unlawful Presence Waiver (Form I-601A) or Consideration of Deferred Action for Childhood Arrivals (Form I-821D). The Immigration Judge's decision correctly points out that consular processing would still be required, but does not address the fact that the Form I-601A waiver permits aliens to remain in the United States with their families until consular processing is scheduled.

The Immigration Judge's decision, in its present form, does not sufficiently explain the reason for the denial of the motion. See *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (holding that when a motion to reopen is denied, the Immigration Judge must identify and fully explain the reasons for such decision); see also *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (holding that, as the Board has limited fact-finding ability on appeal, there is a heightened need for Immigration Judges to include in their decisions clear and complete findings of fact that are supported by the record and are in compliance with controlling law). As such, we will remand the record to the Immigration Judge for the entry of a new decision adjudicating the respondent's motion to reopen.

---

<sup>1</sup> By filing his motion to reopen within the voluntary departure period, the Immigration Judge's voluntary departure order terminated and the respondent became amenable to the Immigration Judge's alternate order of removal to Mexico. See 8 C.F.R. §§ 1240.26(b)(1)(iii),(e)(1); *Dada v. Mukasey*, 554 U.S. 1 (2008).

We express no opinion regarding the ultimate outcome of the respondent's motion at the present time. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). However, as we deem it necessary for the Immigration Judge to enter a new decision adjudicating the respondent's motion to reopen, the following order is entered.

ORDER: The record is returned to the Immigration Judge for the entry of a new decision adjudicating the respondent's motion to reopen.

  
\_\_\_\_\_  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
3400 CONCORD ROAD, SUITE 2  
YORK, PA 17402

Monique Carreras Imm Law  
Carreras, Monique  
1801 E. Colonial Dr Suite 102  
Orlando, FL 32803

IN THE MATTER OF  
AVALOS-AVALOS, JUAN LUIS

FILE A 205-834-943

DATE: Aug 21, 2013

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

☒ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK  
P.O. BOX 8530  
FALLS CHURCH, VA 22041

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT  
3400 CONCORD ROAD, SUITE 2  
YORK, PA 17402

\_\_\_ OTHER: \_\_\_\_\_  
\_\_\_\_\_

DVQ  
COURT CLERK  
IMMIGRATION COURT

FF

CC: DISTRICT COUNSEL, C/O YORK PRISON  
3400 CONCORD ROAD  
YORK, PA, 174020000

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
YORK, PENNSYLVANIA

IN THE MATTER OF:	)	IN REMOVAL PROCEEDINGS
	)	
AVALOS-AVALOS, Juan Luis	)	File # A 205-834-943
	)	
Respondent	)	
_____	)	

**On Behalf of Respondent:**  
Monique Carrerras-Amadeo, Esq.

**On Behalf of DHS**  
Jeffrey Bubier  
Senior Attorney

**Motion:** Reopening, Stay of Removal by Respondent

*Ruling on Motion*

Respondent, through present counsel, seeks reopening of his voluntary departure order and administratively closure of his case.<sup>1</sup> The motion to reopen will be denied.

In support of his motion, respondent informs that his U.S. citizen wife's visa petition was approved on his behalf in May 2013, subsequent to his April 29, 2013, hearing and which constitutes "new" evidence warranting reopening. Respondent further informs that he intends to file a Provisional Waiver for Unlawful Presence, Form I-601A, but acknowledges that when an alien is in removal proceedings, the proceedings must be administratively closed in order for USCIS to adjudicate the waiver; hence his motion for administrative closure. Respondent lastly informs that he has applied for Deferred Action for Childhood Arrivals, Form I-821D, which constitutes "new" evidence warranting reopening.

In paragraph 11 of his motion, respondent acknowledges that the present motion automatically triggers the federal regulations for ordering his removal. *See* 8 C.F.R. § 1240.26(b)(3)(iii). Indeed, there's no provision within this regulation which creates an exception for "new" evidence.

In short, the court's hands are tied no matter the merit underlying the motion. Moreover, the court was aware at the time of respondent's master calendar hearing that his U.S. citizen wife had filed a visa petition on his behalf, but since respondent was never lawfully admitted to this country,

---

<sup>1</sup> Because the voluntary departure period is close at hand, the court elected to rule on the motion prior to receiving any government response.

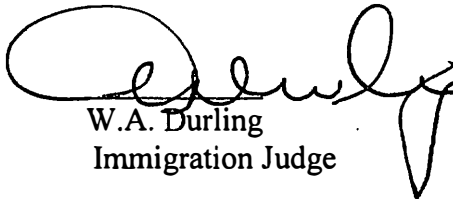
he could not adjust status but must return to Mexico to consular process. It is for this reason the court granted respondent the maximum 120 days for voluntary departure.

In conclusion, the court is not unaware of respondent's plight. Nevertheless, a filing of a motion to reopen while under voluntary departure triggers the above regulation which requires the court to vacate the voluntary departure grant and to order his removal. The following orders are entered.

Order: Respondent's motion to reopen these proceedings is denied.

Further Order: Respondent's grant of voluntary departure is hereby vacated and he is ordered removed to Mexico in accordance with 8 C.F.R. § 1240.26(b)(3)(iii).

Further Order: Respondent's motion for a stay of removal is denied.

  
W.A. Durling  
Immigration Judge

August 21, 2013