



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: IRRIAZA-VALDILLEZ, NEPTALI

A 216-383-996

Date of this notice: 10/17/2018

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:
Geller, Joan B
Adkins-Blanch, Charles K.
Snow, Thomas G

Luhang:5
User team: Docket

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Falls Church, Virginia 22041

File: A216-383-996 – Los Angeles, CA

Date: **OCT 17 2018**

In re: Neptali IRRIAZA-VALDILLEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Madelaine D. Behr, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's decision, dated April 26, 2018, denying his motion to reopen. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent sought reopening to apply for adjustment of status after his wife filed a visa petition of which he is the beneficiary. His motion was accompanied by an Application to Register Permanent Residence or Adjust Status (Form I-485) and other supporting documents. On appeal, the respondent has presented additional supporting documentation, the lack of which the Immigration Judge had cited as a basis for denying the motion. Considering the totality of the circumstances presented, including the respondent's apparent prima facie eligibility for adjustment of status, we will reopen these removal proceedings and remand the record to the Immigration Judge. *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002).

Upon remand, the Immigration Judge should provide the parties with an opportunity to present additional evidence, for example evidence that the visa petition has been approved or evidence of the bona fide nature of the marriage. 8 C.F.R. § 1003.31(c) (providing Immigration Judges with authority set time limits for the filing of applications and related documents). If the United States Citizenship and Immigration Services ("USCIS") has not yet adjudicated his wife's visa petition, the respondent will bear the burden of demonstrating "good cause" for a continuance. 8 C.F.R. §§ 1003.29, 1240.6; *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (recognizing that a continuance may be warranted where an alien has demonstrated that he is the beneficiary of a pending immigrant visa petition and established a likelihood of success on an application for adjustment of status). Likewise, if USCIS approves the Form I-130, the respondent will bear the burden of demonstrating that he is eligible for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a), and warrants such relief as a matter of discretion. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d).

We express no opinion, at the present time, regarding the ultimate outcome of these removal proceedings. The following order will be entered.

ORDER: These removal proceedings are reopened, the Immigration Judge's voluntary departure order, entered on March 13, 2018, is vacated, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.



FOR THE BOARD