



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: ONDRISEK, VACLAV

A078-965-231

Date of this notice: 3/9/2012

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:
Kendall-Clark, Molly

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Falls Church, Virginia 22041

File: A078 965 231 - Chicago, IL

Date:

MAR - 9 2012

In re: VACLAV ONDRISEK

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Justin Randolph, Esquire

ON BEHALF OF DHS: Anastasie M. Senat
Assistant Chief Counsel

APPLICATION: Reopening

On September 28, 2007, the Board dismissed the respondent's appeal from the Immigration Judge's decision. The Board also denied the respondent's motion to remand for adjustment of status. On June 10, 2011, the respondent filed this untimely motion to reopen. *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). The Department of Homeland Security ("DHS") argues that the motion is barred under the regulations. *See* 8 C.F.R. § 1003.2(c)(2). The respondent, however, specifically seeks reopening pursuant to the Board's sua sponte authority. *See* 8 C.F.R. § 1003.2(a). The motion will be granted.

In its previous order, the Board dismissed the respondent's appeal from the Immigration Judge's February 2, 2006, decision denying his motion to continue pending this Board's adjudication of an appeal from the denial of an immigrant visa petition. The DHS denied that visa petition, filed by the respondent's United States citizen spouse, because the bona fides of the qualifying marriage had not been established. The respondent's appeal from the Immigration Judge's February 2, 2006, decision was rendered moot, however, because on May 8, 2006, the Board dismissed the appeal from the denial of the visa petition for lack of jurisdiction. Although the respondent offered evidence that his spouse filed a second visa petition on September 20, 2006, as well as evidence in support of the bona fides of the marriage, the Board also denied the respondent's motion to remand for adjustment of status in its September 28, 2007, decision.

The respondent now seeks reopening to apply for adjustment of status based on the approval on April 3, 2009, of the second visa petition. *See* Motion Tab 2. In compliance with the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), the respondent also raises an ineffective assistance of counsel claim against the attorney who previously represented him before the Board

in removal proceedings, and before the Board and the DHS in visa petition proceedings. *See* Motion Tab 3. Given the circumstances, including the approved spousal visa petition, the evidence in support of the bona fides of the marriage, and the allegations of ineffective assistance of counsel, we will reopen the proceedings sua sponte, and remand the record to the Immigration Judge for further proceedings. *See* 8 C.F.R. § 1003.2(a). Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this decision.


FOR THE BOARD