



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 22041

**Kozoll, Christopher Michael
Kozoll & Associates Immigration Law PLLC
332 West Broadway
Suite 1213
Louisville, KY 40202**

**DHS/ICE Office of Chief Counsel - MEM
80 Monroe Ave., Ste 502
Memphis, TN 38102**

Name: NAFEE, RIYADE

A 089-616-155

Date of this notice: 10/17/2016

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

schm...
Userteam: Docket

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Falls Church, Virginia 22041

File: A089 616 155 – Memphis, TN

Date:

OCT 17 2016

In re: RIYADE NAFEE

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Christopher Michael Kozoll, Esquire

This case was last before us on May 13, 2016, when we dismissed the respondent's appeal from the Immigration Judge's decision finding his qualifying marriage not bona fide and terminating his conditional permanent resident status based on marriage. On July 13, 2016, the respondent filed a timely motion to reopen seeking the opportunity to pursue an application for adjustment of status based on a pending visa petition filed on his behalf by his new United States citizen spouse. The Department of Homeland Security (DHS) has not responded to the motion, which will be granted.

A motion to reopen shall not be granted unless it appears that the evidence sought to be offered "was not available and could not have been discovered or presented at the former hearing." See 8 C.F.R. § 1003.2(c)(1). Further, this Board has held that a party who seeks to reopen proceedings to pursue a discretionary grant of relief from removal bears a "heavy burden" of demonstrating that if his motion to reopen were granted, the new evidence presented would likely change the result in the case. *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992). Moreover, a motion to reopen proceedings to apply for adjustment of status based on a marriage entered into after the commencement of proceedings must include, inter alia, "clear and convincing evidence indicating a strong likelihood that the respondent's marriage is bona fide." *Matter of Velarde*, 23 I&N Dec. 253, 256 (BIA 2002).

In support of his motion, the respondent has submitted, inter alia, various photographs, letters, marriage and divorce decrees, a lease agreement, and a photocopy of his child's birth certificate. The respondent states, in his brief, that this birth certificate evidences the bona fide nature of his marriage, because he and his new wife bore a child together. Notwithstanding the previous findings regarding the respondent's first marriage (I.J. at 12; Bd. Dec. at 1-3), we agree that this birth certificate represents strong evidence of the bona fide nature of his current marriage. Especially given the lack of DHS opposition, we find that the respondent's evidence warrants a remand for further proceedings regarding his application for adjustment of status. *Id.* In so finding, we note that any discretionary issues may be addressed by the parties upon remand. Accordingly, the following order will be entered.

ORDER: The motion is granted, and the record will be remanded to the Immigration Court for further proceedings consistent with the foregoing decision.



FOR THE BOARD