



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

Cargill, Andrew, Esq.
Law Office of Andrew M. Cargill, P.A.
9050 Pines Blvd., 450-1
Pembroke Pines, FL 33024

DHS/ICE Office of Chief Counsel - MIA
333 South Miami Ave., Suite 200
Miami, FL 33130

Name: ROBINSON, DAMION

A088-009-491

Date of this notice: 6/5/2012

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: A088 009 491 - Miami, FL

Date:

JUN - 5 2012

In re: DAMION ROBINSON

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Andrew Cargill, Esquire

ON BEHALF OF DHS: Paulette R. Taylor
Assistant Chief Counsel

APPLICATION: Reconsideration; reopening

The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reconsider our decision dated January 12, 2012. We dismissed the respondent's appeal from the Immigration Judge's decision which found him removable and denied his request for a continuance. The respondent also moves to reopen proceedings to apply for adjustment of status. The motion to reconsider will be denied, and the motion to reopen will be granted.

The respondent's motion to reconsider (filed on February 9, 2012) is timely. The respondent asserts in his motion to reconsider that we overlooked the Receipt Notice (Form I-797C) [Motion Exh. C] for the visa petition filed on his behalf by his U.S. citizen spouse, which was previously included as an attachment to his appeal brief. However, what was attached (to the respondent's second Notice of Appeal [Form EOIR-26]) was a U.S. Postal Service ("USPS") track and confirm search result which showed that an item was delivered on February 6, 2010, in Chicago, IL 60680. On the USPS delivery confirmation receipt are the notations "USCIS - I-130 (I-485) (Robinson)" in the space provided for where the article was sent to. These documents are not sufficient to show that the visa petition on the respondent's behalf was filed with the U.S. Citizenship and Immigration Services ("USCIS"). We conclude that there are no material factual or legal errors in our January 12, 2012, decision. *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006).

The respondent's motion to reopen is timely. The respondent meets the requirements in *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002), *clarified or modified by Matter of Lamus*, 25 I&N Dec. 61 (BIA 2009). The respondent's motion to reopen is timely, not numerically barred, and there is no bar under section 240B(d)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(d)(1). The respondent presents clear and convincing evidence (Motion Exh. O) which indicates a strong likelihood that the marriage is bona fide. Such evidence includes a birth certificate of the U.S. citizen child of the respondent and his spouse, photographs, bank statements listing joint bank accounts, and affidavits of the respondent's spouse, father, mother-in-law, brother-in-law, and other relatives and friends. The Department of Homeland Security ("DHS") opposes the respondent's motion to reopen, but we do not find its opposition persuasive. Although the USCIS denied the respondent's application for adjustment of status because he was in removal proceedings and it had

no jurisdiction over his adjustment application (Motion Exh. J), no evidence has been presented that the visa petition filed on the respondent's behalf by his U.S. citizen spouse has been denied. The respondent presents the receipt notice for the visa petition (Motion Exh. C). A check of the USCIS's case status system (using receipt number MSC1013314458) shows that the visa petition is still pending. We will thus grant the respondent's motion to reopen and remand the record to the Immigration Judge to allow the respondent to renew his application for adjustment of status in these removal proceedings.

Accordingly, the following orders will be entered.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is granted, and proceedings are reopened.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.


FOR THE BOARD