



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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DHS/ICE Office of Chief Counsel - SND
880 Front St., Room 1234
San Diego, CA 92101-8834

Name: CISNEROS-SANCHEZ, HILIARIO

A 079-791-113

Date of this notice: 11/13/2013

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.
Grant, Edward R.
Guendelsberger, John

User team: Docket

For more unpublished BIA decisions, visit www.irac.net/unpublished

Falls Church, Virginia 22041

File: A079 791 113 – San Diego, CA

Date:

NOV 13 2013

In re: HILARIO CISNEROS-SANCHEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David W. Williams, Esquire

ON BEHALF OF DHS: Ted Y. Yamada
Deputy Chief Counsel

APPLICATION: Adjustment of status

The respondent appeals from the Immigration Judge's July 18, 2012, decision denying the respondent's motion to reopen. The Department of Homeland Security (DHS) opposes the appeal. The appeal will be sustained, and the record will be remanded.

The respondent failed to timely file applications for relief by May 2, 2012, the deadline set by the Immigration Judge on October 19, 2011. In a decision dated May 9, 2012, the Immigration Judge deemed the applications abandoned and granted voluntary departure to the respondent. On June 8, 2012, the respondent filed a motion to reopen, which included a sworn statement from the respondent's counsel, David Williams. In that statement, Mr. Williams averred that his employer retired from practice in February 2012, resulting in Mr. Williams taking over the employer's caseload. Mr. Williams then admitted that due to administrative changes, he failed to properly calendar the May 2, 2012, filing deadline. By order dated July 18, 2012, the Immigration Judge denied the motion, finding that the respondent had failed to comply with *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

The U.S. Court of Appeals for the Ninth Circuit, in whose jurisdiction this case lies, has held that strict compliance with *Matter of Lozada*, *supra*, is not required when the ineffectiveness of counsel was plain on its face. *Tamang v. Holder*, 598 F.3d 1083, 1090 (9th Cir. 2010); *Castillo-Perez v. INS*, 212 F.3d 518, 526 (9th Cir. 2000) (ineffectiveness was plain on its face where petitioner's former counsel misrepresented to petitioner that his application had been filed and petitioner later filed a declaration complying with *Lozada*); *Lo v. Ashcroft*, 341 F.3d 934, 938 (9th Cir. 2003) (ineffectiveness was plain on its face where former counsel mis-calendared the removal hearing, petitioner failed to appear at the hearing, and declarations were filed that complied with the first two prongs of *Lozada*); *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 824-25 (9th Cir. 2003) (ineffectiveness was plain on its face where former counsel forgot to file the brief because he was transitioning to a new job and taking over a former colleague's caseload, and declarations were filed satisfying the first prong of *Lozada*).


Here, Mr. Williams has admitted that the failure to timely file the applications was due to his error, not the respondent's. Consequently, we find that ineffectiveness of counsel is plain on the face of the record. *See Lin v. Ashcroft*, 377 F.3d 1014, 1027 (9th Cir. 2004) (holding that the

court “must consider the underlying merits of the case to come to a tentative conclusion as to whether [a petitioner's] claim, if properly presented, would be viable,” notwithstanding the alleged ineffective assistance of counsel).

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge's decisions of July 18, 2012, and May 9, 2012, are vacated and the proceedings are reopened.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
401 WEST A STREET, SUITE #800
SAN DIEGO, CA 92101

LAW OFFICE OF JAMES G. ROCHE
WILLIAMS, DAVID, ESQ.
1702 N. MAIN ST., STE #201
SANTA ANA, CA 92706

Date: Jul 19, 2012

File A079-791-113

In the Matter of:
CISNEROS-SANCHEZ, HILARIO

____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.

____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

____ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

[Signature]

Immigration Court Clerk

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cc: YAMADA, TED, DEPUTY CHIEF COUNSEL
880 FRONT STREET, ROOM #2246
SAN DIEGO, CA 921018834

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN DIEGO, CALIFORNIA

In the Matter of: A079 791 113 Hilario Cisneros-Sanchez

ORDER

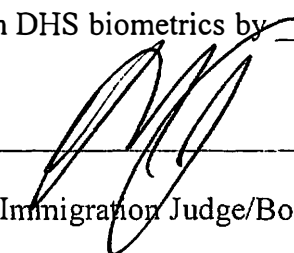
Upon consideration of DHS's MOTION FOR 30-DAY EXTENSION TO FILE RESPONSE TO RESPONDENT'S MOTION TO REOPEN, it is HEREBY ORDERED that the motion be ☒ GRANTED ☐ DENIED because:

- ☐ DHS does not oppose the motion.
- ☐ Respondent does not oppose the motion.
- ☒ A response to the motion has not been filed with the court.
- ☒ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely _____.
- ☐ Other: _____

Deadlines:

- ☐ The applications(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics by _____.

7-18-2012
Date



Immigration Judge/Board Member

Certificate of Service

This document was served by ☒ Mail ☒ Personal Service

To ☐ Alien ☐ Alien c/o Custodial Officer ☒ Alien's Atty/Rep ☒ DHS

Date: 07/18/12

By: Court Staff 

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
401 West A Street, Suite 800
San Diego, California 92101**

File No.: 079-791-113

) Date: July 18, 2012

In the Matter of

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Hillario Cisneros Sanchez,

Respondent

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT:

**ON BEHALF OF DEPARTMENT OF
HOMELAND SECURITY:**

David W. Williams, Esquire

Ted Y. Yamada, Esquire

APPLICATION: Motion to Reopen.

DECISION AND ORDER OF THE IMMIGRATION JUDGE

The Court agrees with the opposition filed by the Government. The respondent has not properly filed a claim of ineffective assistance of counsel pursuant to Matter of Lozada, 19 I&N Dec. 637 (BIA 1988), and has not shown that he is exempt from doing so.

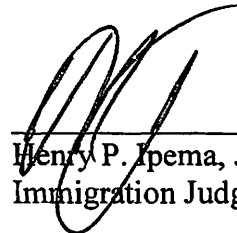
As respondents are often reminded in Court, when it comes to appeal, they have only 30 days to file with the Board of Immigration Appeals, and if they are even one day late, the Board may simply dismiss their appeal as not having been timely filed. The appeal may be dismissed as untimely without any prior communication from the Board to the respondent. In contrast, here at the Master Calendar hearing held on October 19, 2011, the respondent was personally informed by the Court, both orally and in writing, of the deadlines for filing and the consequences of failing to properly and timely file. See "Record of Master Calendar Pre-Trial Appearance and Order" form for October 19, 2011, (signed by both the respondent and the respondent's counsel).¹ Moreover, the Court gave the respondent more than six months to meet the filing deadline. *Id.* The respondent has failed to show that he is not personally responsible for the failure to meet the filing requirements in this case. 8 C.F.R. § 1003.31(c); *see also* "Decision and Order of the Immigration Judge," dated May 9, 2012.

¹ A transcript of the proceedings is available upon order of the Board of Immigration Appeals. Alternatively, review of the Digital Audio Record of the proceedings is available to the Board of Immigration Appeals and to the parties by appointment with the Court.

ORDERS

ORDER: The motion to reopen is denied.

FURTHER ORDER: APPEAL RIGHTS: Both parties have the right to appeal the decision. Any appeal must be received by the Board of Immigration Appeals on or before 30 calendar days from the date of service of this decision.


Henry P. Ipema, Jr.
Immigration Judge

cc: Mr. Williams for the Respondent.
Mr. Yamada for the DHS.