



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

**Schendel, Sarah J.  
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Boston, MA 02108**

**DHS/ICE Office of Chief Counsel - HLG  
1717 Zoy Street  
Harlingen, TX 78552**

**Name: ALVES-LEAL, CLAUDIONIZIO**

**A 098-892-990**

**Date of this notice: 4/8/2016**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Grant, Edward R.  
Guendelsberger, John  
O'Leary, Brian M.

Yours,  
User team: Docket

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Falls Church, Virginia 22041

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File: A098 892 990 – Harlingen, TX

Date:

APR 08 2016

In re: CLAUDIONIZIO ALVES-LEAL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sarah Schendel, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Brazil, was ordered removed from the United States in absentia on May 5, 2005, after not appearing at a hearing. He appeals from the Immigration Judge's decision dated December 8, 2014, denying his November 13, 2014, motion to reopen. The appeal will be sustained and the record will be remanded.

The respondent states that on November 1, 2013, he entered into a same-sex marriage to a United States citizen who has submitted a visa petition (Form I-130) on his behalf. He further states he is now eligible to adjust his status to a lawful permanent resident due to recent changes in the law, and that his departure from the United States would cause his spouse extreme hardship.

On June 26, 2013, the Supreme Court ruled that section 3 of the Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419, 2419 (1996) (DOMA) is unconstitutional. *United States v. Windsor*, 133 S. Ct. 2675 (2013). Thereafter, this Board held that the Supreme Court's ruling in *Windsor* had removed section 3 of the DOMA as an impediment to the recognition of lawful same-sex marriages and spouses for all purposes under the Act, including immigrant visa petitions. *Matter of Zeleniak*, 26 I&N Dec. 158 (BIA 2013). Given the intervening Supreme Court and Board precedent, reopening sua sponte is warranted.

ORDER: The appeal is sustained, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings.

  
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FOR THE BOARD