



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
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Name: ARREOLA-ARREOLA, SERGIO

A 011-434-117

Date of this notice: 9/14/2018

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:  
Grant, Edward R.  
Guendelsberger, John  
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

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File: A011-434-117 – El Centro, CA

Date:

SEP 14 2018

In re: Sergio ARREOLA-ARREOLA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

APPLICATION: Reopening

The respondent's case is before the Board on remand from the United States Court of Appeals for the Ninth Circuit. *Arreola-Arreola v. Sessions*, 713 F. App'x 675 (9th Cir., Feb. 26, 2018). The Department of Homeland Security has not offered a brief on remand to the Board. Upon reconsideration of the respondent's appeal from the Immigration Judge's March 5, 2013, decision, we will sustain the appeal, and terminate the proceedings.

The respondent is a 61-year-old native and citizen of Mexico who entered the United States as a lawful permanent resident on April 7, 1959, at the age of two. On October 6, 1998, the respondent was ordered removed to Mexico pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii) (1995) (alien convicted of an aggravated felony), based on his convictions for driving under the influence of alcohol in violation of sections 23152(b) and 23175 of the California Vehicle Code. The respondent waived appeal.

On December 26, 2012, the respondent filed a motion to reopen and terminate before the Immigration Judge. The respondent sought the exercise of the Immigration Judge's authority to reopen and terminate the proceedings sua sponte in view his equities, claims of ineffective assistance of counsel, and a change in law whereby the 1996 crime underlying his removability was determined not to be an aggravated felony. *See United States v. Trinidad-Aquino*, 259 F.3d 1140 (9th Cir. 2001); *Montiel-Barraza v. INS*, 275 F.3d 1178 (9th Cir. 2002). On March 13, 2015, the Board dismissed the respondent's appeal from the Immigration Judge's March 5, 2013, decision denying his motion. The Ninth Circuit granted the respondent's petition, finding that the Board erred in dismissing the appeal, and remanded the record to the Board.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge determined that the respondent's motion did not demonstrate an exceptional situation to warrant sua sponte reopening. *See* 8 C.F.R. § 1003.23(a)(1). However, a fundamental change in law may qualify as an exceptional situation that merits the exercise of discretion to reopen a case sua sponte. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999). In view of the particular circumstances of this case, including the change in law affecting the basis of the

respondent's removability, we find that reopening sua sponte reopening was warranted. *See also Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). Therefore, the Board's March 13, 2015, decision will be vacated and the respondent's appeal will be sustained. The motion to reopen will be granted, and the proceedings will be terminated without prejudice.

Accordingly, the following orders will be entered.

ORDER: The Board's March 13, 2015, decision is vacated.

FURTHER ORDER: The respondent's appeal is sustained and the motion to reopen is granted.

FURTHER ORDER: The removal proceedings are terminated without prejudice.

  
FOR THE BOARD