



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

park, andrew
Law Office of Andrew Park
3700 Wilshire Blvd., Suite 260
Los Angeles, CA 90010

DHS/ICE
606 S. Olive Street, 8th Floor
LOS ANGELES, CA 90014

Name: TREJO-ORTIZ, CHRISTIAN

A 099-647-473

Date of this notice: 6/21/2016

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

Userteam: Docket

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Falls Church, Virginia 22041

File: A099 647 473 – Los Angeles, CA

Date:

JUN 21 2016

In re: CHRISTIAN TREJO-ORTIZ a.k.a. Christian Trejo a.k.a. Chris Trejo a.k.a. Christian Trejo Ortiz a.k.a. Chris Trejo Ortiz a.k.a. Cshristian Trejo-Ortiz a.k.a. Christian Trejoortiz

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Andrew Park, Esquire

APPLICATION: Reopening

The final order of removal in these proceedings was entered by the Board on September 18, 2014, when we dismissed the respondent's appeal. The respondent filed an untimely and number-barred motion to reopen his proceedings on May 19, 2016. *See* sections 240(c)(7)(A), (C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(7)(A), (C); 8 C.F.R. § 1003.2(c)(2). The respondent does not dispute the untimeliness of his motion, but alleges ineffective assistance of counsel and requests that the Board exercise its *sua sponte* authority to reopen his proceedings in the interests of justice. *See* 8 C.F.R. § 1003.2(a). The Department of Homeland Security ("DHS") has not responded to the motion. The motion will be granted.

The respondent has submitted evidence that the Superior Court of the State of California, County of Orange, has allowed the respondent to withdraw his guilty plea and vacated his 2014 conviction for possession for sale of marijuana in violation of California Health and Safety Code Section 11359 and allowed him to plead guilty to accessory to a crime, a felony in violation of Penal Code section 32 (Supplement to Motion to Reopen filed on June 7, 2016, at Tabs 3-5). Now the respondent has presented evidence indicating that his prior conviction was vacated because the plea procedures did not comply with CPL§ 440 (*see* Motion at attachments, Supplement to Motion to Reopen at Tabs 3-4). *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (holding that a conviction that has been vacated by the criminal court based upon a procedural or substantive defect in the underlying proceedings is no longer a conviction for immigration purposes); *see also Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) (holding that a criminal lawyer representing a non-citizen in connection with a guilty plea has a constitutional duty to advise the defendant that conviction may pose a risk of deportation).

Under the circumstances, we will reopen the proceedings on our own motion. *See* 8 C.F.R. § 1003.2(a); *see also Matter of J-J*, 21 I&N Dec. 976 (BIA 1997). We express no opinion on the outcome of the case. On remand, the Immigration Judge may receive any additional evidence she deems appropriate to the full resolution of this matter. Accordingly, the record will be remanded to the Immigration Judge for further consideration of the respondent's removability and if necessary, any eligibility for relief from removal.

ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

Molly Endell Clay
FOR THE BOARD