U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: HERNANDEZ, EVA **A093-291-466**

Date of this notice: 8/30/2011

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:
Holmes, David B.
Kendall-Clark, Molly
Miller, Neil P.

File: A093 291 466 - Dallas, TX Date: AUG 30 2011

In re: EVA HERNANDEZ a.k.a. Eva Arellano Perez a.k.a. Eva Arellano Hernandez

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Mark McBroom, Esquire

APPLICATION: Reconsideration

The respondent has filed a timely motion to reconsider our June 30, 2010, decision in which we denied her motion to reopen proceedings. The Department of Homeland Security ("DHS") has not responded to the motion. The motion will be granted and the record remanded for further proceedings.

Upon review of the record and the respondent's motion to reconsider, we are convinced that *sua sponte* reconsideration and reopening of these proceedings is warranted. *See* 8 C.F.R. § 1003.2(a). Specifically, we are convinced of various errors surrounding the question of whether the respondent is eligible to pursue adjustment of status based on the approved visa petition filed on her behalf by her United States citizen daughter. We erred in our prior decision denying the motion to reopen, where we stated the record reflects she is inadmissible under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)(ii). As the Immigration Judge stated at the time of the respondent's hearing below, the ground of inadmissibility under section 212(a)(6)(C)(ii) does not apply to statements made prior to September 30, 1996 (Tr. at 3, 9). *See* section 344(c) of the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-637 (Sept. 30, 1996).

Accordingly, the only question was whether her inadmissibility under section 212(a)(7)(A)(i)(I) of the Act - the only ground of inadmissibility found to apply by the Immigration Judge - could be waived. Inadmissibility under that section may be waived under section 212(k) of the Act, and such a waiver does not require a showing of hardship to a qualifying relative. A review of the transcript indicates the parties and the Immigration Judge were under the misapprehension that the respondent would need to meet the requirements for a waiver under section 212(i) of the Act, when in actuality she only needed to meet the requirements for a waiver under section 212(k) of the Act. Under these circumstances, we conclude that reconsideration and reopening are warranted; this matter will be remanded to the Immigration Court for further consideration of the respondent's eligibility for adjustment of status.[1]

[1] As the respondent meets the requirements in 8 C.F.R. § 1245.2(a)(1)(ii)(A)-(D), the Immigration Judge has jurisdiction to adjudicate her application for adjustment of status.

ORDER: These proceedings are reopened *sua sponte*, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

FOR THE BOARD