



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: CASTRUITA-ALMARAZ, EDGAR

A043-779-581

Date of this notice: 1/18/2012

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:
Miller, Neil P.

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 22041

File: A043 779 581 - San Antonio, TX

Date:

JAN 18 2012

In re: EDGAR CASTRUITA-ALMARAZ

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Joseph Reina, Esquire

ORDER:

The respondent, a native and citizen of Mexico, was admitted to the United States as a lawful permanent resident. Based on a conviction for possession of cocaine, he was placed in proceedings. Since his conviction was then considered an aggravated felony, the Immigration Judge denied all relief and ordered the respondent removed. On July 28, 2006, the Board agreed with the Immigration Judge that the respondent's conviction was an aggravated felony under then controlling precedent, and dismissed the respondent's appeal.

The respondent has filed a motion to reopen. The motion is untimely and the respondent does not show that a regulatory exception applies. 8 U.S.C. §§ 1003.2(c)(2) and (3). Rather, the respondent requests that the Board exercise its sua sponte discretionary authority to reopen proceedings because he is eligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a), because his conviction for possession of a controlled substance is not an aggravated felony under *Lopez v. Gonzales*, 549 U.S. 47 (2006), and he otherwise satisfies the requirements of section 240A(a) of the Act. Given the facts and circumstances presented, we will grant the motion and remand the record for further proceedings.¹ Accordingly, the motion is granted and the record is remanded for further proceedings in accordance with this decision.



FOR THE BOARD

¹ There are inconsistencies in the record regarding the respondent's alleged removal. The respondent's counsel states that the respondent was removed, but the respondent's affidavit makes no mention of his removal or illegal reentry. Rather, the respondent's affidavit suggests that he has resided here since he was placed in proceedings. Since the Department of Homeland Security has not responded to the motion or submitted any evidence of removal, we will not reach the issue presented in *Matter of Armendarez*, 24 I&N Dec. 646, 648-49 (BIA 2008).