



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*

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Name: RAJPAUL, SEWDAT

A 058-358-908

Date of this notice: 8/15/2013

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.

williams
User team: Docket

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 22041

File: A058 358 908 – Buffalo, NY

Date:

AUG 15 2013

In re: SEWDAT RAJPAUL

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Samuel N. Iroegbu, Esquire

ON BEHALF OF DHS: Brandi M. Lohr
Assistant Chief Counsel

APPLICATION: Reopening

The final order of removal in these proceedings was entered by the Board on October 21, 2011, when we dismissed the respondent's appeal. The respondent filed an untimely motion to reopen his proceedings on May 29, 2013. *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 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") opposes the motion. The motion will be granted.

The respondent has submitted evidence that a state court has vacated his conviction for attempted assault in the second degree in violation of New York Penal Law section 110-120.05-02 and allowed him to plead guilty to menacing in the third degree in violation of New York Penal Law section 120.15. *See generally Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Chavez*, 24 I&N Dec. 272 (BIA 2007). The record contains the New York state court's order finding evidence of ineffective assistance of counsel related to the respondent's guilty plea and ordering a Padilla hearing (*Motion*, Tab D). The record also contains the hearing transcript for the withdrawal and amended pleas (*Motion*, Tabs E, F).

Considering the entirety of circumstances presented, 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 do not express an opinion on the merits of the respondent's entitlement to relief. On remand, the Immigration Judge may receive any additional evidence he deems appropriate to the full resolution of this matter, including additional or substituted charges of deportability, if any. *See* 8 C.F.R. §§ 1003.30 and 1240.10(e). Accordingly, the record will be remanded to the Immigration Judge for further consideration of the respondent's deportability in light of the evidence of the vacated plea and amended conviction, and for further consideration of the respondent's eligibility for relief from deportation.

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

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings not inconsistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD