U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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BEZA, ION ALEXANDER
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Name: BEZA, ION ALEXANDER **A200-630-890**

Date of this notice: 10/27/2011

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:
Guendelsberger, John

File: A200 630 890 - San Diego, CA

Date: OCT 27 2011

In re: ION ALEXANDER BEZA a.k.a. Ion Beza

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Termination

This case was last before the Board on July 25, 2011, when it affirmed the Immigration Judge's March 24, 2011, decision finding him removable as an overstay. *See* sections 101(a)(15), 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15), 1227(a)(1)(B). On August 12, 2011, the respondent filed this timely motion to reconsider that decision.[1] *See Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006); section 240(c)(6) of the Act, 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b). The Department of Homeland Security has not opposed the motion. The motion will be granted and the record remanded to the Immigration Judge for further proceedings.

The following facts are not in dispute. The respondent, a citizen of Canada, entered the United States on December 22, 2009, as a non-immigrant professional pursuant to section 214(e) of the Act, 8 U.S.C. § 1184(e), relating to the North American Free Trade Agreement ("NAFTA"). The respondent possessed a "multiple entry visa," and a Form I-94 relating to the respondent's Trade NAFTA Visa ("TN Visa") authorizing the respondent to stay and work in the United States temporarily until December 22, 2010. The respondent testified that following his lawful admission, he and his employer became embroiled in a dispute regarding wages. While pursuing a claim against his employer, the respondent sought to obtain evidence from immigration officers at the San Ysidro Port of Entry on September 29, 2010, and he explained to them that there was a dispute between the respondent and his employer and that he needed certain information to assist him with his complaint against his employer. In March 2011, the respondent was served with the Notice to Appear alleging that he entered the United States on September 29, 2010, as a non-immigrant TN NAFTA Canadian with authorization to remain in the United States for a temporary period not to exceed December 22, 2010, and charging him with being an overstay non-immigrant under section 237(a)(1)(B) of the Act.

Before the Immigration Judge and on appeal, the respondent argued that after having informed the immigration officers on September 29, 2010, that he was no longer employed, he could no longer be considered to be in valid TN non-immigrant status, and that when he left the San Ysidro Port of Entry, he did so as a Canadian tourist (B-2) with authorization to remain in the United States for 6

[1] The Department of Homeland Security has informed the Board that the respondent was removed to Canada on August 24, 2011.

months until March 29, 2011. Therefore, he maintains that he was in compliance with the conditions of his admission as a tourist when the Notice to Appear was issued.

In her decision, the Immigration Judge noted that the immigration officers at San Ysidro did not terminate or cancel the respondent's TN professional status on September 29, 2010, and that his multiple entry visa and Form I-94 were proof that the respondent remained in TN non-immigrant status between September 29, 2010, and December 22, 2010. The respondent now argues, inter alia, that pursuant to 8 C.F.R. § 214.6(g), he should not have been readmitted to the United States on September 29, 2010, as a TN non-immigrant, and that he should have been admitted as a tourist. Upon reconsideration, it appears that the Immigration Judge neither referenced nor considered the regulation at 8 C.F.R. § 214.6(g) in her decision.

The regulation at 8 C.F.R. § 214.6(g) provides, in pertinent part, that an alien with a Form I-94 "may be readmitted to the United States in TN classification for the remainder of the authorized period of TN admission on Form I-94, . . . provided that the original intended professional activities and employer(s) have not changed, and the Form I-94 has not expired." The Immigration Judge noted, and it is undisputed, that the respondent was no longer employed when he told the immigration officers, on September 29, 2010, that he was engaged in a dispute with his former employer. The Immigration Judge further noted that the respondent testified that he "was explicit in his explanation to immigration officers that he was no longer employed." Immigration Judge's Decision at 1. The Immigration Judge determined, however, that "the fact that Respondent was no longer employed . . . did not necessarily mean that Respondent was out of status or that his TN visa status was automatically cancelled." *Id.* at 2. Pursuant to 8 C.F.R. § 214.6(g), however, an alien such as the respondent, whose original intended professional activities and employer had changed, is not eligible to be readmitted to the United States in TN non-immigrant status even with a valid Form I-94. Given the circumstances of the respondent's case, we will grant the motion to reconsider, and remand the record to the Immigration Judge for further consideration of this case in light of the regulation at 8 C.F.R. § 214.6(g). Accordingly, the following orders will be entered.

ORDER: The motion to reconsider is granted.

FURTHER ORDER: The proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision.

FOR THE BOARD