



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: BAH, DIOULDE**

**A 087-551-820**

**Date of this notice: 7/17/2020**

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:  
Wilson, Earle B.

Userteam: Docket

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*RC*

Falls Church, Virginia 22041

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File: A087-551-820 – New York, NY

Date: JUL 17 2020

In re: Dioulde BAH

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Theodore A. Violet, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Guinea, appeals from the March 21, 2019, decision of the Immigration Judge, denying her motion to reopen removal proceedings. The Department of Homeland Security (DHS) has not responded to the respondent's appeal, which will be sustained.

We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent filed an untimely motion to reopen seeking to adjust her status based upon an approved I-130, Petition for Alien Relative filed by her United States citizen spouse (Respondent's Br.) (unpaginated).<sup>1</sup> In denying her motion, the Immigration Judge noted that he had not received any response from the DHS (IJ at 1). However, the record reflects that the DHS indicated that it did not oppose the respondent's motion to reopen. Given the totality of the evidence now before us, including the DHS's affirmative non-opposition to the motion, we find reopening is warranted to afford the respondent the opportunity to pursue adjustment of status before the Immigration Judge. *See Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). We express no opinion on the outcome of these proceedings and note that the respondent bears the burden of establishing eligibility for relief. Section 240(c)(4)(A) of the Immigration and Nationality Act. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained, and the Immigration Judge's March 21, 2019, decision, is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

  
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FOR THE BOARD

<sup>1</sup> As the brief is not paginated, we are unable to provide citations to specific pages in this decision. *See* BIA Practice Manual, Chapter 4.6(b) (Feb. 20, 2020), *available at* <https://www.justice.gov/eoir/board-immigration-appeals-2> ("Briefs should *always* be paginated.").