



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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Maria Jones Law Firm
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Phoenix, AZ 85012**

**DHS/ICE Office of Chief Counsel - PHO
2035 N. Central Ave.
Phoenix, AZ 85004**

**Name: CARMONA SALDANA, GUADAL...
Riders:208-073-314**

A 097-705-178

Date of this notice: 5/15/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Adkins-Blanch, Charles K.
Grant, Edward R.
Mann, Ana

Userteam: Docket

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www.iraac.net/unpublished/index/

Falls Church, Virginia 22041

Files: A097 705 178 – Phoenix, AZ
A208 073 314

Date: **MAY 15 2017**

In re: GUADALUPE CARMONA SALDANA
ARMIDA CARMONA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Marcos Santiago Favela, Esquire

APPLICATION: Termination

The respondents, a husband and wife, appeal the decision of the Immigration Judge dated October 6, 2016, granting the motion filed by counsel for the Department of Homeland Security (DHS) to terminate these proceedings based upon the DHS' exercise of prosecutorial discretion. The appeal will be sustained, and the record will be remanded.

The respondents oppose the termination of these proceedings. The respondents each filed an application for cancellation of removal for certain nonpermanent residents. They have indicated that they have three children, one of whom is a United States citizen who receives benefits from the Social Security Administration because he is disabled (Resp. Brief at 8; Form EOIR-42B). The respondents also indicate that they previously filed applications for asylum and withholding of removal and argue that they are *prima facie* eligible for those forms of relief from removal as well.

The respondents opposed the exercise of DHS' prosecutorial discretion and want to have the opportunity to have their applications adjudicated, arguing that they are *prima facie* eligible for relief from removal. The Immigration Judge terminated the case based on a finding that the respondents are not enforcement priorities and the DHS wants to exercise its prosecutorial discretion by terminating these types of cases and preserving its limited resources for cases that are enforcement priorities. The Board understands this reasoning but finds that it is not a sufficient basis to terminate these proceedings over the objection of the respondents after the DHS filed a Notice to Appear and the respondents filed an application for relief from removal. *See* 8 C.F.R. § 239.2(a). *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017).

The Immigration Judge's decision dated October 6, 2016, is vacated and the record is remanded to give the respondents an opportunity to pursue their applications for relief from removal. On remand, the parties will have the opportunity to submit additional evidence. After a review of all of the evidence presented, the Immigration Judge should hold any necessary hearings and issue a new decision addressing the respondents' applications for relief from removal.

Accordingly, the following orders will be entered.

ORDER: The Immigration Judge's order dated October 6, 2016, is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with this decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
200 E. MITCHELL DR., SUITE 200
PHOENIX, AZ 85012

Maria Jones Law Firm
Mendez, Edward Alexander
202 East Earll Dr
Suite 370
Phoenix, AZ 85012

Date: Oct 6, 2016

File A097-705-178

In the Matter of:
CARMONA SALDANA, GUADALUPE

____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.

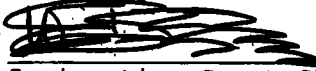
____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

✓
____ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,



Immigration Court Clerk

UL

cc: DISTRICT COUNSEL
2035 N. CENTRAL AVENUE
PHOENIX, AZ 850040000

Immigrant & Refugee Appellate Center, LLC | www.irac.net

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
200 E. MITCHELL DR., SUITE 200
PHOENIX, AZ 85012

In the Matter of:
CARMONA SALDANA, GUADALUPE
CARMONA, ARVIDA
RESPONDENT


Case No: **A097-705-178**
A208-073-314

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

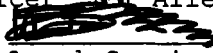
The court has considered Department Of Homeland Security(DHS) motion to dismiss without prejudice and respondent's opposition thereto. The court finds that respondents are not enforcement priorities. Additionally DHS wishes to exercise its prosecutorial discretion by terminating these cases and preserve its limited resources for cases that are enforcement priorities. **Accordingly IT IS ORDERED Granting DHS motion to Dismiss these cases without prejudice.**

NTA dated: Jul 21, 2015.


SILVIA R. ARELLANO
Immigration Judge
Date: Oct 6, 2016

Appeal Waived/Reserved by ☒ A/I: NO APPEAL
Appeal Due Date: **11.7.16**

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ Alien's ATT/REP ☒ DHS
DATE: **10-6-16** BY: COURT STAFF 
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

Form EOIR 35 - 6T (Termination)