



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: *S-SIMMONDS, ROGER ANTHONY A 034-062-738

Date of this notice: 3/24/2014

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:
Kendall-Clark, Molly

schwarzA
User team: Docket

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Falls Church, Virginia 20530

File: A034 062 738 – Fishkill, NY

Date: MAR 24 2014

In re: ROGER ANTHONY SIMMONDS a.k.a. Ronald Parker a.k.a. Anthony Simmonds

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Siana J. McLean, Esquire

ON BEHALF OF DHS: C. Cullen Sheppard
Assistant Chief Counsel

APPLICATION: Reopening

ORDER:

On January 27, 2014, the respondent submitted a motion to reopen proceedings in which his appeal was dismissed by the Board on March 29, 1999. He also seeks a stay of removal. The Department of Homeland Security opposes reopening. The record is remanded.

The respondent's motion is untimely as it was filed more than 14 years after the Board's decision. Section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). The respondent avers that reopening is warranted as he is now eligible for relief under former section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1158(c), in light of the holding in *INS v. St. Cyr*, 533 U.S. 289 (2001). He also cites the holding in *Vartelas v. Holder*, 132 S.Ct. 1479 (2012), in this regard.

The Board recently addressed the effect of the holding in *Vartelas*, and concluded that a lawful permanent resident who has accrued 7 consecutive years of lawful unrelinquished domicile in the United States and who is removable by virtue of conviction entered before April 24, 1996, is eligible to apply for discretionary relief under former section 212(c) of the Act, unless he is subject to certain proscriptions that are not applicable in the instant case. *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014); see also *Judulang v. Holder*, 132 S.Ct. 476 (2011). We note that the Immigration Judge determined that the respondent was ineligible for section 212(c) relief as he is in removal proceedings, and because he was convicted of an aggravated felony. Those exemptions appear to be no longer applicable in light of the noted decisions.

It appears that the respondent, who was convicted in 1986, may benefit from these recent decisions. Given the circumstances presented in this case, we find that sua sponte reopening is warranted. Accordingly, the motion to reopen is granted, and the record is remanded to the Immigration Judge for consideration of the respondent's application for relief under former section 212(c) of the Act.


FOR THE BOARD