



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: FANG, XIANG

A 075-451-703

Date of this notice: 2/13/2019

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:
O'Connor, Blair
Greer, Anne J.
Donovan, Teresa L.

Userteam: Docket

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Falls Church, Virginia 22041

File: A075-451-703 – Elizabeth, NJ

Date: **FEB 13 2019**

In re: Xiang FANG a.k.a. Xiang Ting Fang a.k.a. Hao Lan Jian

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: John Chang, Esquire

APPLICATION: Reopening; termination

The applicant, a native and citizen of the People's Republic of China ("China"), appeals the Immigration Judge's July 26, 2018, decision denying his motion to reopen and terminate proceedings. The Department of Homeland Security ("DHS") did not submit a brief on appeal. The applicant's appeal will be sustained in part, and these removal proceedings will be reopened and terminated.

We review findings of fact determined by the Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the applicant's untimely motion to reopen because she found that eligibility for adjustment of status does not qualify as an exceptional circumstance warranting sua sponte reopening (IJ at 2-3). However, the applicant presented evidence that he is not just eligible for adjustment of status, but that United States Citizenship and Immigration Services approved his application for adjustment of status and granted him lawful permanent resident status. We agree with the applicant that lawful permanent resident status qualifies as an exceptional circumstance warranting sua sponte reopening (Respondent's Br. at 9-18). *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). We decline to address the applicant's remaining arguments on appeal (Respondent's Br. at 18-23).

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained in part.

FURTHER ORDER: These proceedings are reopened and terminated.



FOR THE BOARD