



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - DET
333 Mt. Elliott St., Rm. 204
Detroit, MI 48207**

Name: KUKA, LIMAN

A 089-488-415

Date of this notice: 7/10/2018

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:
Grant, Edward R.

Userteam: Docket

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OS

Falls Church, Virginia 22041

File: A089 488 415 – Detroit, MI

Date: **JUL 10 2018**

In re: Liman KUKA

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Marshal E. Hyman, Esquire

APPLICATION: Reconsideration

This matter was last before the Board on January 30, 2018, when we denied the respondent's untimely motion to reopen. The respondent has presently filed a timely motion to reconsider that decision. The Department of Homeland Security has not responded to the present motion. In light of the respondent's factual and legal arguments, we will grant the respondent's motion to reconsider, proceedings will be reopened, and the record will be remanded to the Immigration Court for further proceedings.

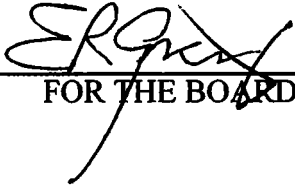
The respondent argues that proceedings should be reopened sua sponte so that he may seek adjustment of status under section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255. In our prior decision, we acknowledged that the respondent's case presents unusual circumstances, but we concluded that the respondent would not be eligible for adjustment of status for an indeterminate period of time because immigrant visas are not immediately available to the spouse of a lawful permanent resident.¹ However, the respondent has presented evidence that his wife had naturalized as a U.S. citizen on January 11, 2018, which materially affects his potential eligibility for adjustment of status since visa numbers are immediately available for the spouse of a United States citizen.² Given this factual distinction, we will grant the respondent's motion to reconsider the denial of his motion to reopen. Accordingly, proceedings will be ordered reopened and the record will be remanded to the Immigration Court for consideration of the respondent's eligibility for adjustment of status.

ORDER: The respondent's motion to reconsider is granted and the Board's January 30, 2018, order is vacated.

¹ In an answer to the respondent's prior motion to reopen, the DHS acknowledged that the procedural posture of this matter presents an "extraordinary circumstance." See DHS September 14, 2017, Answer at 2 n.1.

² The respondent argues that he may pursue adjustment based on a March 30, 2001, priority date, though there is no indication that those visa petition proceedings have been reopened. However, he has also submitted evidence that his spouse has filed a new visa petition on his behalf.

FURTHER ORDER: The respondent's motion to reopen is granted and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.



FOR THE BOARD