



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*

**David, Cheryl
Law Office of Cheryl David
299 Broadway
Suite 706
NY, NY 10007**

**DHS/ICE Office of Chief Counsel - NYC
26 Federal Plaza, 11th Floor
New York, NY 10278**

Name: JALLOW, MOMODOU

A 073-166-631

Date of this notice: 11/18/2019

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Kendall Clark, Molly

User team: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

Falls Church, Virginia 22041

File: A073-166-631 – New York, NY

Date: **NOV 18 2019**

In re: Momodou JALLOW

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Cheryl David, Esquire

APPLICATION: Reopening

On February 12, 2008, the Immigration Judge denied the respondent's motion to reopen and rescind an in absentia order entered against him on January 12, 2000. This case was last before the Board on October 30, 2009, when we dismissed the respondent's appeal from the Immigration Judge's June 6, 2008, decision denying his motion to reconsider. On September 24, 2018, the respondent, a native and citizen of Gambia, filed the instant motion to reopen with the Board to enable him to apply for adjustment of status under section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255. The Department of Homeland Security has not opposed this motion. Upon consideration, the motion will be granted sua sponte. *See* 8 C.F.R. § 1003.2(a).

Initially, we note that the respondent, who does not seek rescission of the in absentia order, is no longer barred from applying for adjustment of status as a consequence of his failure to appear at the scheduled removal hearing on January 12, 2000. *See* section 240(b)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(7). We also note that the instant motion exceeds the time and number limits imposed on motions to reopen before the Board, and that no exceptions to the filing resections appear to apply to this motion. *See* sections 240(c)(7)(A), (C)(i) of the Act. 8 C.F.R. §§ 1003.2(c)(2), (3).

With this motion, the respondent has offered evidence that he is the beneficiary of a visa petition (Form I-130), approved on September 30, 2016, classifying him as the husband of a United States citizen whom he claims to have married in 2011, and with whom he is the parent of two United States citizen children (Motion Exhs. A-B). In her affidavit offered in support of the motion, the petitioner (formerly of Gambia nationality) avers that "[she] came to the United States on September 1, 2010 as a refugee," and she "became a United States citizen on December 22, 2015" (Motion Exh. A).


The respondent has also offered evidence of his equities, including his long residence (since 1992) in the United States (Motion Exhs. E-H), as well as evidence of the financial and emotional hardships that would accrue to his family members as a result of his removal to Gambia (Motion Exhs. A, F, I). Further, he has offered evidence that his wife and his child suffer from health-related problems (Motion Exh. C-D, J).

Upon consideration of the particular circumstances presented, including the claim that the respondent's wife entered the United States as a refugee from Gambia, we will grant the respondent's unopposed motion to reopen sua sponte and remand the record to the Immigration

Judge to enable the respondent to apply for adjustment of status and for other action as deemed appropriate. *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (discussing the Board's limited authority to reopen and reconsider cases sua sponte in exceptional situations). Accordingly, the record will be remanded to the Immigration Judge.¹

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this decision.



FOR THE BOARD

¹ The respondent's request for stay of removal is moot.