



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: DANG, MAN A

A 025-028-785

Date of this notice: 5/7/2020

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.
Mann, Ana
Mullane, Hugh G.

Userteam: Docket

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Falls Church, Virginia 22041

File: A025-028-785 – Eloy, AZ

Date: MAY - 7 2020

In re: Man A DANG a.k.a. Stanley Dang

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Zachary Nightingale, Esquire

APPLICATION: Reopening; termination

The respondent, a native and citizen of Vietnam, appeals from the Immigration Judge's April 18, 2018, decision, denying his March 5, 2018, motion to reopen and terminate removal proceedings completed on July 30, 2008. The appeal will be sustained, the motion to reopen will be granted, and the proceedings will be terminated.

We review findings of fact determined by an 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 respondent was admitted to the United States in 1980 as a lawful permanent resident (IJ at 1; Exh. 1; Respondent's Br. at 5). On April 4, 1996, he was convicted of voluntary manslaughter under section 192(a) of the California Penal Code (1994) (IJ at 3; Exhs. 1-2). On July 30, 2008, an Immigration Judge ordered the respondent removed from the United States pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony—crime of violence as outlined at section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F), based on his voluntary manslaughter conviction (IJ at 1; Respondent's Br. at 7-8). Since that time, the respondent has remained in this country under an Order of Supervision and regularly attends check-ins with the United States Immigration and Customs Enforcement (ICE) (IJ at 3; Respondent's Br. at 8).

The respondent filed a motion to reopen and terminate removal proceedings on March 5, 2018, arguing that his voluntary manslaughter conviction no longer qualifies as an aggravated felony pursuant to *Quijada-Aguilar v. Lynch*, 799 F.3d 1303 (9th Cir. 2015). The Immigration Judge acknowledged that the decision by the United States Court of Appeals for the Ninth Circuit, the jurisdiction in which this case arises, constituted a fundamental change in law that rendered the respondent's removal proceedings eligible for termination (IJ at 3). However, the Immigration Judge also determined that the respondent's motion was time-barred and that (1) he did not act with sufficient diligence to warrant equitable tolling of the generally applicable motions deadline and (2) sua sponte reopening of proceedings was not appropriate (IJ at 3-4). See 8 C.F.R. § 1003.23(b)(1); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).


We agree with the respondent that the Immigration Judge erred in concluding that the respondent did not show the level of due diligence necessary to warrant equitable tolling (IJ at 3-4; Respondent's Br. at 3). In finding the respondent's over 2-year delay in filing his motion after the publication of the Ninth Circuit precedent inexcusable, the Immigration Judge ignored substantial evidence of the respondent's health issues and family circumstances that reasonably prevented him from filing sooner (Respondent's Mot. to Reopen at 5-7, 19-22, Tabs B1-C; Respondent's Br at 3). *See Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (explaining that review of diligence must be fact-intensive and case-specific, assessing reasonableness of a respondent's actions in the context of his particular circumstances); *see also Kwai Fun Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2011) (describing due diligence as reasonable diligence given the litigant's particular circumstances). Furthermore, the respondent's unawareness of the change in case law until 2017 was reasonable, considering his pro se status throughout removal proceedings, the government's inability to effectuate his removal order since 2008, and ICE's lack of any obligation to notify the respondent of legal developments during his check-ins (IJ at 3-4; Respondent's Mot. to Reopen at Tab B1; Respondent's Br. at 15-18).

Therefore, we conclude that equitable tolling of the filing deadline is appropriate based on the specific and exceptional circumstances outlined in this case. In addition, because the same circumstances that support equitable tolling qualify as exceptional circumstances more generally, we also conclude that sua sponte reopening of these proceedings is warranted. Given the Ninth Circuit's precedent, the respondent's removability under section 237(a)(2)(A)(iii) of the Act is no longer sustainable (IJ at 3; Exh. 1). He has not been charged under any other ground of removability (Exh. 1). Therefore, removal proceedings will be reopened and terminated.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained, and the removal proceedings are reopened.

FURTHER ORDER: The removal proceedings are terminated without prejudice.



 FOR THE BOARD

Board Member Hugh G. Mullane respectfully dissents without opinion.