



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: CARRILLO MAZARIEGOS, EDWIN A 208-023-110

Date of this notice: 12/5/2017

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

User team: Docket

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Falls Church, Virginia 22041

File: A208 023 110 – Charlotte, NC

Date: DEC - 5 2017

In re: Edwin CARRILLO MAZARIEGOS

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Janeen J. Hicks Pierre, Esquire

APPLICATION: Reconsideration

This matter was last before the Board on June 23, 2017, when we dismissed the respondent's appeal for lack of jurisdiction based on the respondent's acceptance of the Immigration Judge's grant of pre-conclusion voluntary departure and waiver of his right to appeal. On July 20, 2017, the respondent filed a timely motion to reconsider the Board's dismissal of his appeal. The Department of Homeland Security (DHS) has not responded to the motion. The motion will be granted and the record remanded.

The Board does not normally have jurisdiction over motions filed in cases where the Board never assumed initial jurisdiction, such as an untimely appeal. *Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974). However, the Board retains jurisdiction over a motion to reconsider its dismissal of an untimely appeal to the extent that the motion challenges the finding of untimeliness or requests consideration of the reasons for untimeliness. *Matter of Lopez*, 22 I&N Dec. 16 (BIA 1998).

In moving to reconsider, the respondent argues that he was unrepresented at his final hearing below and that the waiver of his right to appeal was not knowing and voluntary. In support of this assertion, the respondent argues that the Immigration Judge did not advise him that his waiver was irrevocable and thus his waiver was not effective. *See Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320 (BIA 2000). Moreover, the respondent cites to his prima facie eligibility for adjustment of status as further support for the assertion that he would not have knowingly given up his right to appeal.

Upon review of the entirety of the record and arguments presented in the respondent's motion, including the respondent's prima facie eligibility for relief and lack of opposition from the DHS, we deem it appropriate to reconsider and vacate our June 23, 2017, decision pursuant to our sua sponte authority under 8 C.F.R. § 1003.2(a). We will accept the respondent's appeal on certification and remand the record for consideration of the respondent's eligibility for relief. *See* 8 C.F.R. § 1003.1(c). Accordingly, the following orders will be entered.

ORDER: The respondent's motion to reconsider is granted.

FURTHER ORDER: The Board's decision dated June 23, 2017, is vacated.

FURTHER ORDER: The Immigration Judge's January 4, 2016, decision is taken on certification.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD