



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

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Law Office of Robert L. Lewis
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Oakland, CA 94612**

**DHS/ICE Office of Chief Counsel - HLG
1717 Zoy Street
Harlingen, TX 78552**

Name: MONTANO-MONTANO, LISSETH... A 200-119-434

Date of this notice: 8/30/2016

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'Leary, Brian M.
Adkins-Blanch, Charles K.
Mann, Ana

Userteam: Docket

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www.irac.net/unpublished/index/**

Handwritten signature/initials

Falls Church, Virginia 22041

File: A200 119 434 – Harlingen, TX

Date:

AUG 30 2016

In re: LISSETH DEL CARMEN MONTANO-MONTANO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kevin Michael Crabtree, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed from the United States in absentia on March 13, 2006, after not appearing at a hearing. She filed a motion to reopen on January 11, 2016, and she appeals from the Immigration Judge's February 3, 2016, decision denying the motion. The appeal will be sustained.

The Board defers to the factual findings of an Immigration Judge, unless they are clearly erroneous, but it retains independent judgment and discretion, subject to applicable governing standards, regarding questions of law and the application of a particular standard of law to those facts. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

On appeal, the respondent argues that she established an exceptional situation to reopen these proceedings sua sponte. *See Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997) (holding that the Board's and the Immigration Judge's power to reopen or reconsider cases sua sponte is limited to exceptional situations and is not meant to cure filing defects or circumvent the regulations, where enforcing them might result in hardship). The respondent's motion to reopen is supported by evidence establishing that she has been granted derivative asylee status. *See* sections 208(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(3); 8 C.F.R. §§ 208.21 and 1208.21. The Department of Homeland Security has also not responded to the respondent's motion to reopen and to her appeal. Upon consideration, given the respondent's present status as an asylee in this country, we will exercise our sua sponte authority to reopen and terminate the removal proceedings without prejudice. *See* 8 C.F.R. § 1003.2(a).

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and these proceedings are reopened and terminated without prejudice.


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
2009 W. JEFFERSON AVE, STE 300
HARLINGEN, TX 78550

Law Office of Robert L. Lewis
Crabtree, Kevin Michael
428 13th Street, 7th Floor
Oakland, CA 94612

IN THE MATTER OF FILE A 200-119-434 DATE: Feb 4, 2016
MONTANO-MONTAÑO, LISSETH DEL CARMEN

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

✓ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
2009 W. JEFFERSON AVE, STE 300
HARLINGEN, TX 78550

___ OTHER: _____



COURT CLERK
IMMIGRATION COURT

CC: ASSISTANT CHIEF COUNSEL
1717 ZOY ST.
HARLINGEN, TX, 785520000

FF

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
HARLINGEN IMMIGRATION COURT
HARLINGEN, TEXAS

IN THE MATTER OF) February 3rd, 2016
)
MONTANO MONTANO, LISSETH) Case Number: A 200-119-434
DEL CARMEN)
)
RESPONDENT) In Removal Proceedings

APPLICATIONS: Motion to Reopen

ON BEHALF OF THE RESPONDENT

Kevin M. Crabtree
Law Office of Robert L. Lewis
428 13th Street, 7th Floor
Oakland, CA 94612

ON BEHALF OF THE GOVERNMENT

Assistant Chief Counsel
U.S. Department of Homeland Security
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ORDER OF THE IMMIGRATION JUDGE

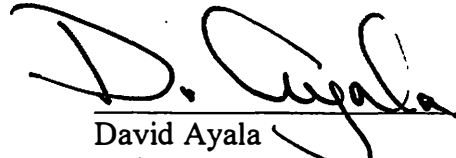
On March 13, 2006, the Court ordered the respondent removed to El Salvador *in absentia* pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act (INA or Act). The respondent, through counsel, filed a motion to reopen on January 11, 2016, requesting that the Court reopen her removal proceedings *sua sponte*. The respondent's motion to reopen will be denied.

It is well-established that an alien seeking reopening bears a heavy burden. *INS v. Abudu*, 485 U.S. 94, 110 (1988). In this regard, the United States Supreme Court has stated: "Motions for reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing, and motions for a new trial on the basis of newly discovered evidence. This is especially true in a deportation proceeding where, as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States." *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citations omitted). The Court's *sua sponte* authority to reopen is not intended as a method by which aliens can circumvent the regulations.

The Court declines to exercise its *sua sponte* authority to reopen the respondent's removal proceedings. See *Matter of J-J*, 21 I&N Dec. 976 (BIA 1997). The respondent has not demonstrated any extraordinary circumstances warranting reopening *sua sponte*.

Accordingly, the following orders shall be entered:

ORDER: The respondent's motion to reopen is DENIED.


David Ayala
United States Immigration Judge

Immigrant & Refugee Appellate Center, LLC | www.irac.net

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL ☒ PERSONAL SERVICE ☒
TO: () ALIEN () ALIEN C/O CUSTODIAN ☒ ALIEN'S ATTY/REP ☒ DHS
DATE: 2-9-2016 BY: COURT STAFF LP

ATTACHMENTS: () EOIR-33 () EOIR-28 () LEGAL SERVICES LIST ☒ OTHER

Appel Forms