



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

**Rudolph, James Bradley
Rudolph, Baker & Associates
419 19th Street
San Diego, CA 92102**

**DHS/ICE Office of Chief Counsel - SND
880 Front St., Room 2246
San Diego, CA 92101-8834**

Name: AGUILAR-GARCIA, PABLO

A 089-270-019

Date of this notice: 10/11/2016

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'Connor, Blair

cc: [redacted]
User team: Docket

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SC

Falls Church, Virginia 22041

File: A089 270 019 – San Diego, CA

Date:

OCT 11 2016

In re: PABLO AGUILAR-GARCIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James Bradley Rudolph, Esquire

ON BEHALF OF DHS: Amelia C. Anderson
Assistant Chief Counsel

APPLICATION: Reopening

The respondent has appealed the Immigration Judge's decision dated October 29, 2014, denying the respondent's motion to reopen and remand and request for stay of removal. The record will be remanded.

We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

In considering this appeal, we note our decision in *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994). Therein, we indicated that when a motion to reopen deportation proceedings is denied, the Immigration Judge must identify and fully explain the reasons for such decision; otherwise, the parties are deprived of a fair opportunity to contest the Immigration Judge's determination on appeal, and the Board is unable to meaningfully exercise its responsibility of reviewing the decision in light of the arguments advanced on appeal. *See also Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999).

The Immigration Judge denied the motion to reopen on a form order, checking the box that states: "[t]he court agrees with the reasons stated in the opposition to the motion," adding the handwritten notation "independently and cumulatively." The Immigration Judge also checked the box that states: "[t]he motion is untimely per," adding the handwritten notation "8 C.F.R. 1003.23(b)(1) and tolling is not appropriate for the reasons stated in the DHS opposition." The Immigration Judge failed to specifically address the issues raised in the respondent's motion, including the allegation of ineffective assistance of counsel regarding prior counsel's conduct, and his claim that he was prejudiced by such conduct. We find that the Immigration Judge's decision provides an insufficient basis upon which the Board can adequately conduct a meaningful review.

Accordingly, we find it necessary to remand the record for inclusion of an appropriate decision by the Immigration Judge. The respondent and the Department of Homeland Security should be served with a copy of the decision and should thereafter be given an opportunity to

submit briefs in accordance with the regulations. The record should then be forwarded to the Board for further consideration.

ORDER: The record is remanded for further proceedings in accordance with this opinion.

Blair Zorn

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
401 WEST A STREET, SUITE #800
SAN DIEGO, CA 92101

Rudolph, Baker & Associates
Rudolph, James Bradley
419 19th Street
San Diego, CA 92102

Date: Oct 29, 2014

File A089-270-019

In the Matter of:
AGUILAR-GARCIA, PABLO

2 Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before 11-28-14. The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.

____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

2 Enclosed is a copy of the order ~~and~~ decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,



Immigration Court Clerk

UL

cc: ANDERSON, AMELIA, ASSISTANT CHIEF COUNSEL
880 FRONT STREET, STE. 2246
SAN DIEGO, CA 92101

United States Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge
San Diego, California

In the Matter of: Pablo Aguilar Garcia

A Number: 089-270-019

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Reopen, it is HEREBY ORDERED

That the motion be GRANTED ☒ DENIED because:

☐ DHS does not oppose the motion.

☐ The respondent does not oppose the motion.

☐ A response to the motion has not been filed with the court.

☐ Good cause has been established for the motion.

☒ The court agrees with the reasons stated in the opposition to the motion, *integrity and commitment*

☒ The motion is untimely per 8 CFR 1003.23(b)(1) and *filling is not appropriate*

☐ Other: *for the reasons stated in the other opposition*

Deadlines:

☐ The application(s) for relief must be filed by _____.

☐ The respondent must comply with DHS biometrics instructions by _____.

10-29-14

Date


Immigration Judge

Certificate of Service

This document was served by: ☒ Mail ☒ Personal Service

To: [] Alien [] Alien c/o Custodial Officer ☒ Alien's Atty/Rep ☒ DHS

Date: 10-29-14 By: Court Staff 

United States Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge
San Diego, California

In the Matter of: Pablo Aguilar Garcia

A Number: 089-270-019

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Request for Stay of Removal, it is HEREBY ORDERED

That the motion be GRANTED ☒ ~~DENIED~~ because:

☐ DHS does not oppose the motion.

☐ The respondent does not oppose the motion.

☐ A response to the motion has not been filed with the court.

☐ Good cause has been established for the motion.

☐ The court agrees with the reasons stated in the opposition to the motion.

☐ The motion is untimely per _____.

☒ Other: *As Moot*

Deadlines:

☐ The application(s) for relief must be filed by _____.

☐ The respondent must comply with DHS biometrics instructions by _____.

10-29-14

Date


Immigration Judge

Certificate of Service

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