



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MORENO-ZALDIVAR, ARTURO ... A 208-506-163

Date of this notice: 5/15/2018

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.

Userteam: Docket

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Falls Church, Virginia 22041

File: A208 506 163 – Chicago, IL

Date: **MAY 15 2018**

In re: Arturo Alan MORENO-ZALDIVAR a.k.a. Arturo Vega Cano a.k.a. Arturo A. Moreno
a.k.a. Jose Moreno a.k.a. Arturo Moreno

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Jeanette Ynfante, Esquire

APPLICATION: Reopening


ORDER:

The respondent has filed a timely motion to reopen proceedings in which the Board dismissed his appeal on December 19, 2017. He also seeks a stay of removal. The Department of Homeland Security (DHS) has not responded to the motion. The motion is granted.

The respondent seeks reopening and remand of his removal proceedings as he has a pending application for a U nonimmigrant visa, and wishes to have his associated request for a waiver of inadmissibility adjudicated by an Immigration Judge. *See* section 212(d)(3)(A)(ii) of the Immigration and Nationality Act; 8 U.S.C. § 1182(d)(3)(A)(ii); 8 C.F.R. § 214.14(c)(1). The respondent recognizes the fact that United States Citizenship and Immigration Services has exclusive jurisdiction over his U visa application. However, he asserts that reopening is warranted in light of recent jurisprudence issued by the United States Court of Appeals for the Seventh Circuit, where this case arises, finding that Immigration Judges have the authority under section 212(d)(3)(A)(ii) of the Act to waive the inadmissibility of U petitioners. *Baez-Sanchez v. Sessions*, 872 F.3d 854 (7th Cir. 2017) (declining to apply *Matter of Khan*, 26 I&N Dec. 797 (BIA 2016)).

As *Baez-Sanchez v. Sessions* was issued after the Immigration Judge's decision, the respondent's ability to pursue the noted waiver before an Immigration Judge is a new and material fact. Moreover, the respondent has submitted evidence showing that he has pending applications both for the U visa, and the noted waiver, along with a valid law enforcement certification (Motion, Tabs C, D). As such, he appears *prima facie* eligible for a U visa. *See* 8 C.F.R. §§ 214.14(c)(1)(i), (2), (4). Given this record, and in light of the noted Seventh Circuit holding, we find that a remand of the record is warranted. Accordingly, the motion and request for a stay of removal are granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings.



FOR THE BOARD