



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: FERREIRA-NEVES, SUSANA LILIBETH

A036-464-449

Date of this notice: 2/25/2011

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:
Kendall-Clark, Molly

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FD

Falls Church, Virginia 22041

File: A036 464 449 - Florence, AZ

Date: FEB 25 2011

In re: SUSANA LILIBETH FERREIRA-NEVES a.k.a. Susana Ferreira

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: James P. Vaughns, Esquire

ORDER:

The respondent filed an untimely motion to reopen on December 28, 2010, after the Board dismissed her appeal on January 31, 2003. Section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2). The Department of Homeland Security (the "DHS") has not responded to the motion. Although the motion is untimely, we will reopen proceedings under our sua sponte authority at 8 C.F.R. § 1003.2(a), and remand the case to the Immigration Court for further proceedings.

The Immigration Judge, as affirmed by the Board, found the respondent subject to removal under section 237(a)(2)(B)(i) of the Act, based on two California drug convictions (I.J. at 2). The Immigration Judge also determined that the respondent was ineligible for cancellation of removal for lawful permanent residents, under section 240A(a) of the Act, as she had been convicted of an aggravated felony. *Id.* at 3-6. That is, on June 28, 1998, the respondent was convicted in California of welfare fraud. *Id.* at 3.

The respondent, who is from Venezuela, presents evidence that, on December 17, 2010, her request for post conviction relief was granted in state court. Her conviction was vacated "... in light of the constitutional deficiencies attendant to said conviction..."

Where, as here, a court with jurisdiction vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006)(conviction vacated pursuant to Ohio law for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes).

The record is therefore remanded to the Immigration Judge so that the respondent may seek relief under section 240A(a) of the Act, or any relief to which she may be entitled.


FOR THE BOARD