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

Cabrera, Nataly Eunice
Law Office of Timothy S. Hart
10085 Westpark Drive, Suite B
Houston, TX 77042

DHS/ICE Office of Chief Counsel - HOU
126 Northpoint Drive, Suite 2020
Houston, TX 77060

Name: A[redacted]-H[redacted], A[redacted] M... **A[redacted]-916**

Date of this notice: 2/10/2020

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:
Noferi, Mark

Userteam: Docket

File: A[redacted]-916 – Houston, TX Date:

In re: A[redacted] M[redacted] A[redacted]-H[redacted]

FEB 10 2020

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Nataly E. Cabrera, Esquire

APPLICATION: Reopening

This matter was last before the Board on December 12, 1991, when we summarily dismissed the respondent's appeal from the Immigration Judge's decision dated July 29, 1991, denying her application for asylum and withholding of deportation but granting voluntary departure with an alternate order of deportation to El Salvador.[1] The respondent, a native and citizen of El Salvador, has filed the instant motion to reopen deportation proceedings to apply for adjustment of status. The record before us does not contain a reply to the motion from the Department of Homeland Security (DHS). The motion will be granted.

On July 5, 2019, the respondent filed a motion to reopen proceedings to afford her the opportunity to apply for adjustment of status based on an approved I-360 self-petition as a battered spouse of a lawful permanent resident (Respondent's Motion at 2-6). *See* section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii). The respondent's motion is exempt from the time limitations on motions to reopen. *See* section 240 of the Act, 8 U.S.C. § 1229a, Note 1 (no time limitations on motions to reopen deportation proceedings for suspension of deportation or adjustment of status based on a Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) self-petition).

The documentary evidence submitted in support of this motion includes a notice dated March 26, 2015, approving an I-360 petition for Amerasian, widower or special immigrant, a completed I-485 application to register permanent residence or adjust status, and an I-864W request for exemption for intending immigrant's affidavit of support, along with other supportive documentation (Respondent Motion, Tabs C-H). Moreover, because the respondent is seeking adjustment of status based on an approved petition for classification as a VAWA self-petitioner, she is not required to demonstrate that she was inspected and admitted or paroled into the United States to establish her eligibility for adjustment of status under section 245(a) of the Act, 8 U.S.C. § 1255(a). This evidence establishes the respondent's prima facie eligibility for a form of relief that was not previously available to her at the time of her proceedings before the Immigration Judge. *See* section 240(c)(7) of the Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(1); *INS v. Abudu*, 485 U.S. 94 (1988); *see also Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

[1] These proceedings originally included the respondent's children[redacted].

Given the respondent's apparent eligibility for special immigrant status and adjustment of status, as well as the lack of any affirmative opposition to the motion from the DHS, the timely motion to reopen will be granted to permit the respondent to present her claim and for the Immigration Judge to take any action deemed appropriate concerning the respondent's application for adjustment of status. *Cf. Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002); *see also Matter of Coelho*, 20 I&N Dec. 464, 471-72 (BIA 1992).

As the record will be remanded, we do not reach the respondent's remaining arguments (Respondent's Motion at 4-6). In remanding, we express no opinion on the ultimate outcome of these proceedings. Accordingly, the following order will be entered.

ORDER: The motion to reopen is granted, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the issuance of a new decision.

FOR THE BOARD