



U.S. Department of Justice

Executive Office for Immigration Review

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Name: CASTELLANOS, GUADALUPE D... A 074-422-175

Date of this notice: 4/14/2020

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:
Creppy, Michael J.
Liebowitz, Ellen C
Hunsucker, Keith

Humad;l
Userteam: Docket

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Falls Church, Virginia 22041

File: A074-422-175 – Los Angeles, CA

Date: APR 14 2020

In re: Guadalupe De Jesus CASTELLANOS

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Alex Galvez, Esquire

APPLICATION: Reopening

This case was last before the Board on October 25, 2007, when we denied the respondent's prior motion to reopen her deportation proceedings. The respondent, a native and citizen of El Salvador, who was subsequently granted Temporary Protected Status ("TPS"), has now moved to reopen so that she may pursue adjustment of status based upon an approved visa petition filed by her United States citizen husband. The Department of Homeland Security ("DHS") has not responded to the motion. The motion will be granted, and the record remanded.

As an initial matter, the respondent's motion is numerically barred, as this is her second motion before the Board. See 8 C.F.R. § 1003.2(c)(2). Additionally, the respondent's motion is untimely because it was filed over 17 years after the final administrative order of deportation was entered by the Board on September 11, 2002. See section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). However, motions which exceed the filing deadline may be granted upon a showing of "exceptional circumstances," in the exercise of discretion. See *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). The respondent requests that the Board exercise its sua sponte authority to reopen the proceedings based upon a change of law that makes her potentially eligible for adjustment.

A fundamental change of law may be sufficient to justify sua sponte reopening. See *Matter of G-D-*, 22 I&N Dec. 1132, 1134-35 (BIA 1999). Here, the respondent relies on the decision of the United States Court of Appeals for the Ninth Circuit in *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017) (holding that a grant of Temporary Protected Status is an admission for purposes of applying for adjustment of status), to establish that she is prima facie eligible for the relief she seeks. This case represents a fundamental change in law, as it is contrary to our understanding of what constitutes an admission. We respectfully disagree with the Ninth Circuit's legal analysis for the reasons set forth in the decision of U.S. Citizenship and Immigration Services in *Matter of H-G-G-*, 27 I&N Dec. 617 (AAO 2019). However, as this matter arises within the jurisdiction of the Ninth Circuit, we are bound to apply the holding in *Ramirez v. Brown* unless or until it is overturned. See *Matter of Anselmo*, 20 I&N Dec. 25, 30-32 (BIA 1989).

We generally require a respondent to demonstrate due diligence for a favorable exercise of discretion. See, e.g., *Matter of Sibrun*, 18 I&N Dec. 354 (BIA 1983) (requiring an alien to demonstrate due diligence to be granted a continuance in the exercise of discretion).

Here, the respondent did not file her motion until more than two years after the Ninth Circuit issued *Ramirez v. Brown*. However, our consideration of this delay is tempered by our recognition that the respondent was already in lawful immigration status through TPS. Under the circumstances, we conclude that due diligence is satisfactorily demonstrated. We also consider that the DHS has not filed any opposition to the motion. 8 C.F.R. § 1003.2(g)(3). Accordingly, we will grant the respondent's motion and return the record to the Immigration Court to determine if the respondent is otherwise eligible for and deserving of adjustment of status.

The following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD