



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

**AMEZOLA, MARICELA
AMEZOLA LEGAL GROUP, APC
P.O. BOX 16371
SAN DIEGO, CA 92176**

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

Name: LOPEZ GUTIERREZ, BLANCA

A 099-294-885

Date of this notice: 6/17/2016

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:
Kendall-Clark, Molly

Panel
User team: Docket

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WJ

Falls Church, Virginia 22041

File: A099 294 885 – San Diego, CA

Date: **JUN 17 2016**

In re: BLANCA LOPEZ GUTIERREZ

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Maricela Amezola, Esquire

APPLICATION: Reopening

The respondent has filed an untimely motion to reopen claiming ineffective assistance by the attorney who represented her in her proceedings before the Immigration Judge, as well as the attorney who subsequently represented her in connection with her Board appeal. The Department of Homeland Security (DHS) has not filed a response, and therefore this motion is deemed unopposed. *See* 8 C.F.R. § 1003.2(g). The motion will be granted.¹

The respondent contends that both of her former attorneys failed to comprehensively investigate and pursue her eligibility for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a), particularly as relating to her continuous residence in the United States for 7 years after having been admitted in any status. It is now claimed that a more thorough investigation conducted by current counsel has revealed that the respondent was admitted to the United States earlier than thought by her former attorneys. It is asserted that if given the chance, she can now demonstrate statutory eligibility for section 240A(a) relief.

Despite the untimeliness of the instant motion, the respondent has sufficiently shown that the 90-day filing deadline for her motion is equitably tolled under controlling circuit law. *See Iturribarria v. INS*, 321 F.3d 889 (9th Cir. 2003); 8 C.F.R. § 1003.2(c)(2). Further, her motion submissions reflect substantial compliance with the requirements for presenting an ineffective assistance claim against her former attorneys. *See* Motion to Reopen, Exhs. B2, C, and E (including, e.g., declarations from each of the respondent's former attorneys conceding that they were unaware of her earlier admission to the United States, and that they did not pursue the line of inquiry engaged in by current counsel); *Castillo-Perez v. INS*, 212 F.3d 518 (9th Cir. 2000); *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

¹ The respondent's petition for review of this Board's December 5, 2014, decision dismissing her appeal is pending before the United States Court of Appeals for the Ninth Circuit. *See Lopez Gutierrez v. Lynch*, Docket No. 14-73883. The parties should advise the Ninth Circuit of today's decision granting her motion to reopen, and remanding for further proceedings before the Immigration Judge.

In addition, the respondent has demonstrated that the ineffective assistance by former counsel in the manner claimed *may* have affected the outcome of her proceedings. *See Mohammed v. Gonzales*, 400 F.3d 785, 793-94 (9th Cir. 2005) (holding that to establish prejudice, an alien need *not* show that counsel's ineffectiveness definitively changed the outcome of his proceedings; rather, that the inadequacy of counsel's performance *may* have affected the outcome of the proceedings); *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858 (9th Cir. 2004), and the cases cited therein.

As such, the respondent's motion to reopen, which has not been opposed by the DHS, will be granted, and the record will be remanded for further proceedings, including consideration of her eligibility for cancellation of removal under section 240A(a) of the Act, and any other relief for which she may qualify. The respondent retains the burden of demonstrating her eligibility for the relief sought. *See* 8 C.F.R. § 1240.8. In remanding, we express no opinion regarding the ultimate disposition of this case.

Accordingly, the following orders are entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and entry of a new decision.


FOR THE BOARD