U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: ESTRADA, JORGE ROBERTO

A 072-520-654

Date of this notice: 8/6/2020

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:
Kelly, Edward F.
COUCH, V. STUART
Pepper, S. Kathleen

Userteam: Docket

File: A072-520-654 – Los Angeles, CA Date: AUG - 6 2020

In re: Jorge Roberto ESTRADA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mike Razi, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated August 2, 2019, denying her motion to reopen removal proceedings. The respondent was ordered deported in absentia on December 18, 1996, as an alien who entered without inspection. The Department of Homeland Security ("DHS") has not filed a response to the appeal. The appeal will be sustained and the record remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent states that he is the beneficiary of a visa petition (Form I-130) approved in 2017, submitted on his behalf by his U.S. citizen wife (Exh. B at 3). He further states that he is eligible to adjust his status to that of a lawful permanent resident at a reopened hearing. In addition, the respondent was granted Temporary Protected Status (TPS) in 1999 under section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a and continues to maintain that status (Motion at 3; Exh. D at 84).

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 he 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. *See, e.g., 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).

In light of the foregoing, and the specific circumstances presented in this case, we will reopen these proceedings sua sponte and return the record to the Immigration Court to determine if the respondent is otherwise eligible for and deserving of adjustment of status.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and these proceedings are reopened and remanded for further proceedings consistent with the foregoing opinion.

FOR THE BOARD

Appellate Immigration Judge Stuart V. Couch respectfully dissents without opinion.