



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MALDONADO-GUINANZACA, J...

A 205-873-454

Date of this notice: 10/18/2016

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:
Creppy, Michael J.
Malphrus, Garry D.
Mullane, Hugh G.

Userteam: Docket

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Falls Church, Virginia 22041

File: A205 873 454 – New Orleans, LA

Date:

OCT 18 2016

In re: JOHN ADRIAN MALDONADO-GUINANZACA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pablo Fernandez-Herrera, Esquire

ON BEHALF OF DHS: Charlotte Marquez
Assistant Chief Counsel

APPLICATION: Motion to reopen

The respondent, a native and citizen of Ecuador, appeals from the decision of the Immigration Judge dated December 5, 2014, denying the respondent's motion to reopen to rescind the in absentia removal order that was entered on June 2, 2014. *See* section 240(b)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(A). The Department of Homeland Security ("DHS") opposes the respondent's appeal. The record will be remanded.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

We are unable to meaningfully review the December 5, 2014, decision of the Immigration Judge as that order consists of a two-sentence conclusion of law without any findings of fact or analysis (Resp. Br. at 7-8). *See* 8 C.F.R. §§ 1003.1(d)(3)(i), (d)(3)(iv); *Matter of S-H-*, 23 I&N Dec. 462, 463-65 (BIA 2002) (Immigration Judges must include in their decisions clear and complete findings of fact that are supported by the record and comply with controlling law). The Immigration Judge determined that the respondent had not met his burden to establish ineffective assistance of his former counsel in order to toll the filing deadline for a motion to reopen. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988); *see also Matter of Compean, Bangaly, J-E-C-*, 25 I&N Dec. 1 (A.G. 2009).

However, the Immigration Judge did not render any findings regarding what requirements of *Matter Lozada, supra*, for an ineffective assistance claim, have or have not been met.¹ In this

¹ *See Hernandez-Ortez v. Holder*, 741 F.3d 644, 647 (5th Cir. 2014) (finding an alien's argument that strict compliance with the *Lozada* requirements is not necessary was without merit and distinguished the Fifth Circuit's precedent decisions from those of the Ninth Circuit that adopted a different approach in applying the *Lozada* requirements, where the Ninth Circuit hears ineffective assistance of counsel claims even when a petitioner has arguably failed to comply with the *Lozada* requirements).

regard, there is evidence of record that the respondent submitted an affidavit setting forth his agreement with his former counsel, that the respondent has informed his former counsel of the allegations of ineffective assistance through a complaint with a state bar, and the respondent has submitted a formal complaint against his former counsel with the appropriate disciplinary authority (Resp. Br. at 12; DHS Br. at 2-4).² *Matter of Lozada, supra*, at 639. Moreover, the Immigration Judge should determine whether the respondent has met his burden to establish that his former counsel's ineffective assistance resulted in actual prejudice (Resp. Br. at 12-13). *Id.* at 640. Additionally, if the Immigration Judge finds that the ineffective assistance of counsel claim has been established, he should then determine if equitable tolling applies. Therefore, the record must be remanded for the preparation of a decision by the Immigration Judge that will permit meaningful appellate review. By remanding the record, the Board does not express any opinion on the final outcome of this matter.

Accordingly, the following order will be entered.

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


FOR THE BOARD

² The respondent claims that his former counsel was Dalbir Singh, Esquire, but his affidavit indicates that the only individual he talked with associated with the law firm was a Ms. Veronica Piedra. The respondent has not identified if Ms. Piedra is a licensed attorney. *See* Motion to Re-Open Removal Proceedings (12/02/14), Affidavit of John Adrian Maldonado-Guinanzaca (11/25/14).

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1 CANAL PL-365 CANAL ST, 2450A
NEW ORLEANS, LA 70130

In the Matter of:
MALDONADO-GINANZACA, JOHN ADRIAN
RESPONDENT

Case No.: A205-873-454
Docket: NEW ORLEANS, LOUISIANA
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of RESPONDENT

() Motion to Reconsider an Immigration Judge's decision

(X) Motion to Reopen proceedings

filed in the above entitled matter, it is hereby ordered that the motion

() Be Granted

(✓) Be Denied for reasons indicated in the attached decision. *No exceptional circumstances shown. Respondent is alleging ineffective assistance of counsel but has not complied with Matter of Lozada, 19 I&N Dec. 637 (BIA 1988) requirements.*

Rafael C. Nadybonye
Immigration Judge
Date: 12-5 2014

Appeal: NO APPEAL (A/I/B)
Appeal Due By: Jul 2, 2014

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [] ALIEN [] ALIEN c/o Custodial Officer [] Alien's ATT/REP [✓] DHS

DATE: 12-5-14 BY: COURT STAFF

Attachments: [] EOIR-33 [] EOIR-28 [✓] Legal Services List [] Other