



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: ENRIQUEZ-GODINEZ, BERLIN

A 097-816-969

Date of this notice: 6/24/2020

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:
Grant, Edward R.

Userteam: Docket

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Falls Church, Virginia 22041

File: A097-816-969 – Los Angeles, CA

Date:

In re: Berlin ENRIQUEZ-GODINEZ

JUN 24 2020

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Esperanza Arrizon Palomera, Esquire

APPLICATION: Reopening

The respondent appeals the Immigration Judge's May 15, 2019, written decision granting the Department of Homeland Security's ("DHS") motion to reconsider and vacating his February 4, 2019 decision sua sponte reopening the proceedings in which the respondent was ordered removed in absentia under section 240(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5), on January 6, 2011.¹ The respondent has also filed a motion to rescind her removal order and remand the proceedings to the Immigration Judge. *See Matter of Ige*, 20 I&N Dec. 880, 884 (BIA 1994) (recognizing that motions to remand are adjudicated under the same standards as motions to reopen); 8 C.F.R. § 1003.2(c)(4) (a motion to reopen filed during the pendency of an appeal may be considered a motion to remand). The Department of Homeland Security has not filed an opposition to the respondent's appeal or motion. The motion will be granted.²

The respondent seeks equitable tolling of the 180-day time limit on motions to rescind in absentia removal orders based on ineffective assistance of counsel. Section 240(b)(5)(C)(i) of the Act. She has sufficiently complied with the procedural requirements of an ineffective assistance of counsel claim pursuant to *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). Further, prior counsel conceded that he deficiently represented the respondent, as he did not adequately investigate the respondent's circumstances to determine that her purported failure to submit a change of address form with the Immigration Court was beyond her control (Respondent's Mot. tab F). Specifically, the respondent was unable to update her address with the Immigration Court for more than 6 years after being served with her September 11, 2004, notice to appear ("NTA"), as the DHS did not file the NTA with the Immigration Court until September 22, 2010 (Exhs. 1, 4). Because the respondent has shown that she was the victim of ineffective assistance of counsel, we will equitably toll the 180-day time limit, rescind her in absentia removal order, and remand the proceedings to the Immigration Judge to allow the respondent to apply for relief from removal.

¹ The Immigration Judge agreed with the DHS that the Board, not the Immigration Judge, had jurisdiction to consider the respondent's motion to reopen, given that the Board issued the final administrative decision on August 14, 2017 (IJ at 2).

² Because we are granting the respondent's motion, we need not address the merits of her appeal. *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach); *Matter of A-B-*, 27 I&N Dec. 316, 340 (A.G. 2018).

See Martinez-Hernandez v. Holder, 778 F.3d 1086, 1088 (9th Cir. 2015) (an alien can show prejudice where counsel's performance may have impacted the outcome of the case); *Flores v. Barr*, 930 F.3d 1082, 1088-89 (9th Cir. 2019).

Accordingly, the following orders will be entered.

ORDER: The respondent's motion to rescind her in absentia removal order and remand the proceedings is granted.

FURTHER ORDER: The Board's August 14, 2017, decision and the Immigration Judge's March 9, 2017, and January 6, 2011, decisions are vacated.

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


FOR THE BOARD