



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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333 South Miami Ave., Suite 200
Miami, FL 33130**

Name: CUE, JOSE ANTONIO

A 072-552-808

Date of this notice: 2/5/2015

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:
Holmes, David B.

Userteam: Docket

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Donna Carr

Falls Church, Virginia 20530

File: A072 552 808 – Miami, FL

Date: FEB - 5 2015

In re: JOSE ANTONIO CUE a.k.a. Jose Cue a.k.a. Jose Comas

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Renee Soto, Esquire

APPLICATION: Reopening

The final order of removal in these proceedings was entered by the Board on October 9, 2002, when we dismissed the respondent's appeal. The respondent filed an untimely motion to reopen his proceedings on November 28, 2014. *See* sections 240(c)(7)(A), (C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(7)(A), (C); 8 C.F.R. § 1003.2(c)(2). The respondent does not dispute the untimeliness of his motion, but requests that the Board exercise its sua sponte authority to reopen his proceedings in the interests of justice. *See* 8 C.F.R. § 1003.2(a). The Department of Homeland Security ("DHS") has not responded to the motion. The motion will be granted.

The respondent asserts that on December 16, 2010, the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, vacated the guilty pleas and sentences for the his 1997 convictions for: grand theft in the first degree, burglary of an unoccupied structure, grand theft in the third degree, possession of a motor vehicle with altered identification, and retaining or using a forged or altered certificate of title or cancellation (*Motion* at Tabs E,F,G,H). These convictions were ultimately nolle prossed on March 16, 2011 (*Motion* at Tab I). These convictions formed the basis for the respondent's two charges of removability under sections 237(a)(2)(a)(ii), and (iii) of the Act, 8 U.S.C. §§ 1227(a)(2)(a)(iii),(iii). The respondent urges that the vacatur of this conviction was for procedural and substantive infirmities, and thus, he argues that the DHS can no longer meets its burden of proof regarding the charges of removability.

Considering the totality of circumstances presented in the respondent's motion, the proceedings are reopened on our own motion under the provisions of 8 C.F.R. § 1003.2(a). *See Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). Here, the respondent has presented evidence indicating that his prior guilty pleas were vacated and the cases ultimately nolle prossed because the plea procedures did not comply with the State of Florida Criminal Rule 3.1 72(c)(8). (*see Motion*, Tabs E, F). *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (holding that a conviction that has been vacated by the criminal court based upon a procedural or substantive defect in the underlying proceedings is no longer a conviction for immigration purposes); *see also Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) (holding that a criminal lawyer representing a non-citizen in connection with a guilty plea has a constitutional duty to advise the defendant that conviction may pose a risk of deportation). We find it appropriate to remand this matter to the Immigration Judge to for

further consideration of the respondent's removability. Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted.

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



FOR THE BOARD