



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: ROMERO-DURAN, MARTHA

A 201-221-138

Date of this notice: 8/24/2015

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:
Miller, Neil P.

6/1/14

Userteam: Docket

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Falls Church, Virginia 22041

File: A201 221 138 – Denver, CO

Date: AUG 24 2015

In re: MARTHA ROMERO-DURAN

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Koby L. Polaski, Esquire

ON BEHALF OF DHS: Kalin Ivany
Assistant Chief Counsel

APPLICATION: Reopening

This matter was last before the Board on February 12, 2015, when we dismissed the respondent's appeal and denied her motion to remand. The respondent has filed a timely motion to reopen reiterating her request that she be allowed to pursue an application for adjustment of status based on her November 2013 marriage to a United States citizen, on the basis of which a visa petition remains pending. The Department of Homeland Security (DHS) opposes the motion solely on the basis that the visa petition has not yet been approved.

We find it appropriate to reopen and remand after considering the factors set forth in this Board's decision in *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002). The respondent's timely motion, in combination with the evidence submitted with her prior motion to remand, provides sufficient evidence of the bona fides of her marriage and her prima facie eligibility for adjustment of status such that reopening is warranted.¹ 8 C.F.R. § 204.2(a)(1)(iii)(B) (setting forth the types of documents that may be submitted to establish a marriage was entered into in good faith). Evidence included a marriage certificate, and her husband's statement that he met the respondent in 2007, they developed a romantic relationship in 2012, and that he was unable to marry the respondent until he could finalize a divorce from his prior wife, from whom he stated he had been separated since 1979. The record reflects that he also appeared at the hearing below to explain that he was pursuing a divorce and intended to marry the respondent (Tr. at 6). The evidence shows that the divorce was finalized in October 2013, he married the respondent in

¹ The new evidence submitted regarding her 2012 conviction makes clear that the nature of that conviction was not accurately represented to the Immigration Court below. It appears unlikely that the respondent would be inadmissible due to this conviction, such that she would be ineligible to pursue adjustment; however, these issues should be explored further on remand. Colorado Revised Statutes §§ 18-6-401(1), (7)(b)(I) (crime of child abuse where no death or injury results is a class 2 misdemeanor), 18-1.3-501(1)(a) (class 2 misdemeanor is punishable by a maximum sentence of 12 months imprisonment); *see also* section 212(a)(2)(A)(ii)(II) of the Act (petty offense exception includes crimes for which the maximum penalty possible did not exceed imprisonment for one year and actual penalty did not exceed 6 months imprisonment).

November 2013, and that he filed the visa petition on her behalf in March 2014.² The respondent also submitted a joint utility statement along with detailed affidavits of friends and co-workers who attest to the bona fides of the relationship. The DHS's only stated basis for opposing the motion is the fact that the visa petition has not yet been adjudicated. Under the circumstances, we find it appropriate to grant the motion to reopen.

In view of this determination, we need not resolve whether the motion was also in the nature of a motion to reconsider, and was untimely as such.

ORDER: The motion to reopen is granted, and 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 While the USCIS webpage indicates the petition was received in the local office in December 2014, the USCIS receipt demonstrates it was filed on March 7, 2014.