



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 20530

**DUSSARD, JERMAINE HORATIO
A037-332-033
ETOWAH COUNTY DETENTION CENTER
827 FORREST AVE
GADSDEN, AL 35901**

**DHS/ICE Office of Chief Counsel - NYD
201 Varick, Rm. 1130
New York, NY 10014**

Name: DUSSARD, JERMAINE HORATIO

A 037-332-033

Date of this notice: 7/16/2015

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.

Userteam: Docket

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As

Falls Church, Virginia 20530

File: A037 332 033 – New York, NY

Date: JUL 16 2015

In re: JERMAINE HORATIO DUSSARD a.k.a. Kevin Dussard a.k.a. Kevin Adams
a.k.a. Jermaine Henry a.k.a. Jermaine K. Dussard a.k.a. Kevin Adam
a.k.a. David Kevin Younger a.k.a. Kevin Younger a.k.a. Michael Jamel Gaston

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Sarah B. Campbell
Assistant Chief Counsel

APPLICATION: Reopening; reconsideration

The Board's June 15, 2015, decision in this matter will be vacated and the proceedings reinstated. After issuing our prior decision we received the respondent's "Response and Rebuttal" to the Department of Homeland Security's "Opposition to the Respondent's Motion to Reopen." Because the respondent submitted the supplemental filing into the detention center's mailing system before we issued our decision, we will sua sponte reopen the proceedings to consider the respondent's additional arguments and evidence, as well as the respondent's April 29, 2015, motion to reopen. See 8 C.F.R. § 1003.2(a).

The Board entered the final administrative decision on June 5, 2014, when we dismissed the respondent's appeal of the Immigration Judge's decision ordering the respondent removed to Jamaica in connection with his extensive criminal record. Nearly a year later, the respondent seeks reopening to pursue a waiver of inadmissibility under former section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c), and to apply for cancellation of removal pursuant to section 240A(a) of the Act, 8 U.S.C. § 1229b(a). Because the respondent avers that the Board erred, we will also treat the motion as seeking reconsideration. 8 C.F.R. § 1003.2(b). The Department of Homeland Security opposes the motion, which will be denied as untimely as the respondent has not demonstrated that an exception to the time limitations on motions to reopen and for reconsideration applies. 8 C.F.R. §§ 1003.2(b)(2) and (c)(2).

Even if the motion were timely, it would be denied, as a motion to reopen is not a mechanism to raise claims that could have been presented below. See *INS v. Wang*, 450 U.S. 139, 141 (1981); *Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991). Nor has the respondent complied with the regulatory requirement of submitting new or previously unavailable evidence that is material to the respondent's claims. See *Matter of O-S-G-*, 24 I&N Dec. 56, 57-58 (BIA 2006); 8 C.F.R. § 1003.2(c).

While the respondent also avers that counsel did not advise him to seek section 212(c) relief, he has not meaningfully raised ineffective assistance of counsel, where he has not shown compliance with *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988). Further, the respondent

has not shown prima facie eligibility for section 212(c) relief or cancellation of removal, given his multiple convictions, including an aggravated felony. Section 240A(a)(3) of the Act.

To the extent that the respondent is seeks bond, the motion is not properly before the Board. Proceedings relating to custody and bond are separate and distinct from removal proceedings. See 8 C.F.R. § 1003.19(d); *Matter of P-C-M-*, 20 I&N Dec. 432, 433-34 (BIA 1991).

Nor has the respondent established exceptional circumstances warranting sua sponte reconsideration or reopening. *Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999). Accordingly, the motion will be denied.

ORDER: The Board's June 15, 2015, order is vacated.

FURTHER ORDER: The motion is denied.



FOR THE BOARD