



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Wissmiller, Ashley  
Law Office of Mark J. Devine  
1306 Fording Island Rd #108  
Bluffton, SC 29910**

**DHS/ICE Office of Chief Counsel - CHL  
5701 Executive Ctr Dr., Ste 300  
Charlotte, NC 28212**

**Name: LOERA ARELLANO, NESTOR VI...    A 208-023-034**

**Date of this notice: 7/26/2017**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby  
Deputy Chief Clerk

Enclosure

Panel Members:  
Cole, Patricia A.  
Greer, Anne J.  
Wendtland, Linda S.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A208 023 034 – Charlotte, NC

Date:

**JUL 26 2017**

In re: NESTOR VICENTE LOERA ARELLANO a.k.a. Vicente Loera

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ashley R. Wissmiller, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled

APPLICATION: Reopening

By a decision of March 15, 2016, the Immigration Judge found the respondent removable as charged and ordered him removed. The respondent filed a timely motion to reopen on June 13, 2016. The Immigration Judge declined to reopen proceedings, with the reason provided being judicial economy. The respondent has appealed. The Department of Homeland Security has not responded to the appeal. The decision of the Immigration Judge will be reversed and the record will be remanded for further proceedings.

The respondent argues that the Immigration Judge erred in denying his motion to reopen these proceedings to await the adjudication of his immediate relative visa petition (Form I-130) so that he could apply for a provisional unlawful presence waiver (Form I-601A) before the United States Citizenship and Immigration Services (USCIS). *See* 8 C.F.R. § 212.7(e); *see also Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives*, Final Rule, 78 Fed. Reg. 536 (January 3, 2013). Although an alien in removal proceedings is generally barred from pursuing the provisional waiver, the pertinent regulation and related regulatory history expressly contemplate the possible grant of administrative closure (followed by a request for termination or dismissal of proceedings without prejudice where the waiver is ultimately approved) for aliens in removal proceedings who would otherwise be eligible to apply for provisional waivers. *See* 8 C.F.R. § 212.7(e)(4)(v); *Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives*, *supra*, at 538.

Assuming, arguendo, that the respondent did not previously meet the requirements for a motion to reopen, we conclude, upon review of the evidence that he has presented on appeal, that remand is warranted in order for the Immigration Judge to determine whether reopening and administrative closure is warranted. *See generally Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992) (explaining that a request for remand must generally meet the same requirements as a motion to reopen and be supported by previously unavailable evidence). Notably, although the respondent acknowledges that he entered without inspection, such that he is not statutorily eligible for adjustment of status pursuant to section 245(a) of the Act, 8 U.S.C. § 1255(a), because the visa petition filed by his wife was approved, he may be eligible for stateside

processing of a Provisional Unlawful Presence Waiver (Form I-601A), if these proceedings are administratively closed. *See* 8 C.F.R. §§ 212.7(e)(4), (5).

The Immigration Judge's decision relating to the motion, in its present form, does not sufficiently explain the reason for the denial of the motion. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (holding that when a motion to reopen is denied, the Immigration Judge must identify and fully explain the reasons for such decision); *see also Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (holding that, as the Board has limited fact-finding ability on appeal, there is a heightened need for Immigration Judges to include in their decisions clear and complete findings of fact that are supported by the record and are in compliance with controlling law); *see also Matter of Avetisyan*, 25 I&N Dec. 688, 692-696 (BIA 2012) (holding that Immigration Judges may consider administrative closure as a matter of discretion, even where one party does not consent, upon consideration of the totality of circumstances and factors such as the reason why administrative closure is sought, the basis for opposition to such closure, the likelihood that the respondent will succeed on any pending petition or application for relief, the anticipated duration of the closure, the responsibility of either party in contributing to the delay, and the ultimate outcome of removal proceedings). Moreover, since the date of the Immigration Judge's decision, the respondent's visa petition was approved, rendering the need for further continuances unnecessary should a motion for administrative closure be adjudicated on remand. As such, we will remand the record to the Immigration Judge for the entry of a new decision and adjudication of the respondent's request to administratively close proceedings. We express no opinion regarding the ultimate outcome of the respondent's motion at the present time. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). However, as we deem it necessary for the Immigration Judge to enter a new decision adjudicating the respondent's motion to reopen, the following orders are entered.

ORDER: The decision of the Immigration Judge of June 21, 2016, is hereby vacated.

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

  
\_\_\_\_\_  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
5701 EXECUTIVE CENTER DR. #400  
CHARLOTTE, NC 28212

Law Office of Mark J. Devine  
Wissmiller, Ashley  
1306 Fording Island Rd #108  
Bluffton, SC 29910

IN THE MATTER OF  
LOERA ARELLANO, NESTOR VICENTE

FILE A 208-023-034

DATE: Jun 21, 2016

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK  
5107 Leesburg Pike, Suite 2000  
FALLS CHURCH, VA 22041

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT  
5701 EXECUTIVE CENTER DR. #400  
CHARLOTTE, NC 28212

OTHER: Decision on MTN + Atch

AD  
COURT CLERK  
IMMIGRATION COURT

FF

CC: LISA DURANT., ESQ  
5701 EXECUTIVE CENTER DR, 300  
CHARLOTTE, NC, 28212

Immigrant & Refugee Appellate Center, LLC | www.irac.net

Respondent, represented by counsel, appeared at a master calendar on August 4, 2015. Respondent's counsel was given *more than an eleven week adjournment* for attorney preparation. On October 29, 2015, respondent appeared at the next master calendar hearing and filed an application for cancellation of removal (Form EOIR-42B). The Court thereafter set an individual merits hearing for March 11, 2016. On February 29, 2016, respondent filed a motion to withdraw the EOIR-42B and have the matter adjourned to a master calendar, which the Court set for March 15, 2016. On that date, respondent requested an order of removal, which the Court entered. Three weeks later, on April 9, 2016, respondent married a United States citizen. His spouse filed a visa petition on his behalf on April 9, 2016. On June 13, 2016, respondent filed a *timely* motion to reopen.

Respondent waited until three weeks after he was under a final order of removal before entering into his current marriage. Even if the Court were to reopen proceedings, the Court could only continue the matter for USCIS to adjudicate the visa petition as there are no pending applications before the Court. Once approved the Court would have to grant more continuances while the respondent pursued an I-601A waiver for his unlawful presence. The Court does not find this is a good use of the Court's limited time and resources. Accordingly, the Court declines to exercise its authority to reopen.

The motion to reopen is DENIED.

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
U.S. IMMIGRATION COURT  
5701 Executive Center Drive, Suite 400  
Charlotte, North Carolina 28212

IN THE MATTER OF: NESTOR VICENTE LOERA ARELLANO  
CASE NO. A 208-023-034

ALIEN ATTORNEY: ASHLEY WISSMILLER, ESQ

DECISION ON A MOTION.

IN

☐ DEPORTATION ☐ EXCLUSION ☒ REMOVAL PROCEEDINGS ☐ AOC ASYLUM ONLY

A **MOTION TO RE-OPEN** has been filed in the above captioned case. The Motion has been duly considered and it appears to the Court that:

☐ The request is timely and reasonable. Therefore, IT IS HEREBY ORDERED that the Motion be GRANTED.

☒ The Motion has been duly considered and it appears to the Court that no substantial grounds have been advanced to warrant its grant. Therefore, IT IS HEREBY ORDERED that the Motion be and the same is hereby DENIED. *See Attadel*

☐ Adjourn to individual / master calendar hearing on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

Dated this *21<sup>st</sup>* day of *June*, 2016

*[Signature]*  
BARRY J. PETTINATO  
U.S. Immigration Judge

This document was served to:

- ☒ District Counsel  
☒ Counsel for Respondent / Applicant  
☐ Respondent / Applicant

Mailed out: *6. 21. 16* By: *[Signature]*