



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - WAS
1901 S. Bell Street, Suite 900
Arlington, VA 22202**

Name: BAIREs PORTILLO, YECSI FOL...

A 201-185-570

Date of this notice: 6/17/2016

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:
Guendelsberger, John**

User team: Docket

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**BAIRES PORTILLO, YECSE FOLERK
A201-185-570
c/o YORK COUNTY PRISON
3400 CONCORD
YORK, PA 17402**

**DHS/ICE Office of Chief Counsel - WAS
1901 S. Bell Street, Suite 900
Arlington, VA 22202**

Name: BAIRES PORTILLO, YECSE FOL...

A 201-185-570

Date of this notice: 6/17/2016

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

Digitized by
UserTeam: digit

Falls Church, Virginia 22041

File: A201 185 570 – Farmville, VA¹

Date: **JUN 17 2016**

In re: YECSI FOLERK BAIRES-PORTILLO

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Tamara L. Jezic, Esquire

ON BEHALF OF DHS: Christopher Gahm
Assistant Chief Counsel

APPLICATION: Reconsideration; reopening

In a decision dated November 20, 2015, the Immigration Judge granted the respondent's application for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a). The Department of Homeland Security ("DHS") appealed from the Immigration Judge's decision, arguing that the respondent did not merit relief as a matter of discretion. On March 30, 2016, the Board sustained the appeal and ordered the respondent's removal to El Salvador. The respondent has now filed a motion to reconsider with the Board. *See* section 240(c)(6) of the Act, 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b). The DHS has also filed a motion to correct an apparent defect in the transcript of the proceedings. Upon consideration, we will reopen the proceedings pursuant to our sua sponte authority and remand the record to the Immigration Judge. *See* 8 C.F.R. § 1003.2(a).

The respondent seeks remand of the proceedings to the Immigration Judge, asserting that there is no record to support either the Immigration Judge's statement that on March 1, 2011, he admitted the allegations and conceded to the charge of removability in the Notice to Appear, or the Immigration Judge's determination that his removability was established by clear and convincing evidence. *See* Respondent's Motion at 1, 5; Immigration Judge's Decision at 1. The Immigration Judge stated at the June 29, 2015, hearing that the allegations in the Notice to Appear were "admitted, charge conceded, in front of another Immigration Judge and sustained" and that "El Salvador was designated as the country of removal." (Tr. at 30). For its part, the DHS moves the Board to take measures to include a record of the hearing on March 1, 2011, in a complete transcript of the proceedings. *See* section 240(c)(7) of the Act, 8 U.S.C. § 1229(c)(7); 8 C.F.R. § 1003.2(c).

Although the respondent's removability was not contested in the respondent's brief in opposition to the appeal, and it was not previously raised in these proceedings for the Board's consideration, in view of the particular circumstances of this case, we will reopen the

¹ The removal hearing was held via televideo conferencing with the respondent in Farmville, Virginia, and the Immigration Judge in Arlington, Virginia.

proceedings sua sponte and vacate our prior order insofar as we stated that “[t]he respondent shall be removed from the United States to El Salvador.” *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (discussing the Board’s limited sua sponte authority to reopen and reconsider cases); 8 C.F.R. § 1003.2(a). Further, the record will be remanded to the Immigration Judge for action as necessary to complete the transcript of the proceedings; to consider further the issue of the respondent’s removability; and, if deemed appropriate, to enter an order of removal to a designated country. Accordingly, the following orders will be entered.²

ORDER: The proceedings are reopened pursuant to the Board’s sua sponte authority.

FURTHER ORDER: The Board’s March 30, 2016, order of the respondent’s removal to El Salvador is vacated.

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



FOR THE BOARD

² The respondent, whose petition for judicial review of the Board’s March 30, 2016, decision is currently pending, is advised to inform the United States Court of Appeals for the Fourth Circuit of this decision. *See Baires-Portillo v. Lynch*, No. 16-1446 (4th Cir., filed Apr. 21, 2016).