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

Edstrom, Michelle L.
Edstrom Law Center
1708 N. Broadway Avenue
Oklahoma City, OK 73103

DHS/ICE Office of Chief Counsel - OKC
4400 SW 44th Street, Suite A
Oklahoma City, OK 73119-2800

Name: SOSA-ALVARADO, LUIS ALBER... **A 200-718-257**

Date of this notice: 1/17/2017

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:
Wendtland, Linda S.
Cole, Patricia A.
Pauley, Roger

Userteam: Docket

File: A200 718 257 – Oklahoma City, OK

Date:

JAN 17 2017

In re: LUIS ALBERTO SOSA-ALVARADO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michelle L. Edstrom, 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

The respondent is a native and citizen of Mexico. This case was last before the Board on December 26, 2013, when we reversed the Immigration Judge's June 19, 2012, conclusion that the respondent was not eligible for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), because he was convicted of a crime involving moral turpitude. We determined that the respondent's Oklahoma conviction for outraging the public decency was not categorically a crime involving moral turpitude. We also determined that the offense was not a crime involving moral turpitude under the modified categorical approach because the statute was overbroad.

We remanded the record to the Immigration Judge for the respondent to have an opportunity to establish that his specific offense of conviction, rather than the underlying conduct supporting the conviction, did not involve moral turpitude. We instructed the Immigration Judge to consider documents outside the record of conviction pursuant to the Attorney General's original decision in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008).[1]

On May 8, 2015, the Immigration Judge deemed the respondent's application for cancellation of removal to be abandoned because he did not file the application by the May 1, 2015, deadline

[1] The Attorney General's original decision in *Matter of Silva-Trevino*, *supra*, subsequently was vacated and remanded to the Board. Upon remand, we held that in assessing moral turpitude, an Immigration Judge must apply the categorical and modified categorical approaches without considering documents outside the record of conviction (except as relevant to the ultimate exercise of discretion for purposes of relief applications). *See Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016). Given that we held in our December 26, 2013, decision that the respondent's offense was not a crime involving moral turpitude under either the categorical or modified approach, the Immigration Judge's June 19, 2012, decision to pretermit the respondent's cancellation of removal application necessarily was incorrect.

set for its submission. *See* 8 C.F.R. § 1003.31(c). On May 15, 2015, the respondent's counsel filed a motion to reconsider indicating that the missed deadline was not the respondent's fault, and was due to a mistake made by an employee in the counsel's office. On May 21, 2015, the Immigration Judge denied the motion to reconsider because counsel acknowledged that the filing deadline was missed, and did not allege any error of fact or law in the motion. *See* section 240(c)(6)(C) of the Act, 8 U.S.C. § 1229a(c)(6)(C); 8 C.F.R. § 1003.23(b)(2).

On June 5, 2015, the respondent filed a motion to reopen, which the Department of Homeland Security ("DHS") did not oppose. The motion set forth the same basis as the motion to reconsider, i.e., the missed deadline for filing the cancellation of removal application was due to an error made by the counsel's employee. On June 15, 2015, the Immigration Judge denied the motion to reopen for lack of jurisdiction because the record reflected that the filing fee was not paid, and the regulations require that a motion to reopen be accompanied by a fee receipt. *See* 8 C.F.R. § 1003.23(b)(1)(ii). The Immigration Judge also concluded that there was no basis on which to reopen sua sponte.

On August 5, 2015, the respondent filed a second motion to reopen setting forth the same basis as the first motion to reopen and the motion to reconsider. The DHS did not oppose the motion. On August 14, 2015, the Immigration Judge denied the motion because he determined that the motion was numerically barred pursuant to 8 C.F.R. § 1003.23(b)(1), which states that subject to certain exceptions not relevant here, a party may file only one motion to reopen. 8 C.F.R. § 1003.23(b)(1); *see also* section 240(c)(7) of the Act. The Immigration Judge also stated that there was no basis to use his sua sponte authority to reopen proceedings.

The respondent now appeals. The appeal will be sustained and the record will be remanded.

We disagree with the Immigration Judge's August 14, 2015, conclusion that there was no basis for a sua sponte reopening. Irrespective of any timeliness or numerical issues, we disagree with the Immigration Judge's May 21, 2015, ruling that the respondent's attorney's error in missing the filing deadline for the respondent's cancellation of removal application did not provide sufficient cause for reconsideration of the Immigration Judge's May 8, 2015, abandonment determination. We do not find abandonment in a case in which the respondent's attorney admitted that the missed filing deadline was not the respondent's fault. Thus, we reverse the Immigration Judge's August 14, 2015, decision not to reopen proceedings sua sponte.

A remand is warranted in this case for further proceedings regarding the respondent's application for cancellation of removal under section 240A(b)(1) of the Act. The parties should have the opportunity to submit evidence regarding the application. The respondent also should have the opportunity to apply for any other relief for which he currently is eligible.[2]

[2] In light of our decision to remand, we decline to address the respondent's appellate argument that the Immigration Judge denied his procedural due process rights when he denied the second motion to reopen (Respondent's Br. at 6).

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FUTHER ORDER: The record is remanded for further proceedings consistent with this opinion and for the entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

Edstrom Law Center
Edstrom Long, Michelle
1708 N. Broadway Avenue
Oklahoma City, OK 73103

IN THE MATTER OF
SOSA-ALVARADO, LUIS ALBERTO

FILE A 200-718-257 DATE: Aug 21, 2015

__ 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
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

X OTHER: Copy of Order

COURT CLERK
IMMIGRATION COURT

FF

CC: OFFICE OF CHIEF COUNSEL
125 E. HWY 114, STE 500
IRVING, TX, 75062

United States Department of Justice
Executive Office for Immigration Review
United States Immigration Court
Dallas, Texas

In Re: Luis Alberto Sosa Alvarado Case No. A200-718-257

ORDER

This matter is before the Court pursuant to the Respondent's August 5, 2015 Motion to Re-Open. For the reasons set forth below, the motion is denied.

The Court entered a final order of removal on May 8, 2015.

Respondent, through counsel, filed a Motion to Re-Consider on May 15, 2015. That motion was denied by written order on May 21, 2015.

Respondent, through counsel, filed a Motion to Re-Open on June 5, 2015. That motion was denied by written order on June 15, 2015.

Respondent, through counsel, has filed yet another Motion to Re-Open on August 5, 2015 alleging the same grounds as asserted in the first and second motions.

A Respondent is limited to the filing of only one Motion to Re-Open. 8 C.F.R. §1003.23(b). Therefore the Respondent's most recent motion is numerically barred and will not be considered.

There is no basis upon which the Court would use its *sua sponte* authority to re-open these proceedings.

For the reasons set forth above, the August 5, 2015 Motion to Re-Open is DENIED. The Motion for Stay of Removal is DENIED.

This 14th day of August, 2015.

Michael P. Baird
United States Immigration Judge