



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Immigrant & Refugee Appellate Center | www.irac.net

Name: DAVILA-ORTIZ, HILDEGARDO J... A 034-324-746

Date of this notice: 9/17/2014

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:
Kendall-Clark, Molly

lucasl
User team: Docket

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Falls Church, Virginia 20530

File: A034 324 746 - Tacoma, WA

Date: SEP 17 2014

In re: HILDEGARDO JAIME DAVILA-ORTIZ a.k.a. Hildegardo Jaime Jr. Davila

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Joseph C. Silvio
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation

APPLICATION: Reopening; remand

The case is before us on the Department of Homeland Security's ("DHS") timely motion to reopen and remand. 8 C.F.R. § 1003.2(c). The respondent has not filed an opposition to the DHS's motion. We will grant the DHS's motion and remand the record for further proceedings and issuance of a new decision.

We review for clear error the findings of fact, including determinations of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

On May 23, 2013, the Immigration Judge found the respondent removable as charged in the Notice to Appear and ordered the respondent removed to Mexico (Exh. 1). Section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i). The respondent timely appealed, and on October 8, 2013, the Board issued a decision dismissing the respondent's appeal. On November 12, 2013, the respondent filed a timely motion to reopen before the Board. 8 C.F.R. § 1003.2(c). On January 8, 2014, the Board issued a decision denying the respondent's motion to reopen, and noting in the decision that the DHS had not filed a response to the respondent's motion to reopen.

On February 18, 2014, the DHS filed a motion to reopen and remand before the Board advising that the respondent appears to have a serious mental disorder or condition that may affect his ability to participate in the proceedings. The DHS's motion further asserts that based on evidence regarding this, the DHS did not oppose the respondent's motion to reopen filed on November 12, 2013. The DHS's motion requests that the Board remand the record to allow the

Immigration Judge to conduct an inquiry into the respondent's mental competency, and to take any additional appropriate actions.

Based upon the representations in the DHS's motion to reopen and remand, including its stated non-opposition to the respondent's earlier-filed motion to reopen, we will grant the DHS's motion and remand the record for further proceedings and issuance of a new decision.

ORDER: The DHS's motion to reopen and remand is granted.

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


FOR THE BOARD