



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 20530

**White, Curtis G., Esq.
Law Office of Daniel Corno
4214 Old Arbor Way
Humble, TX 77346**

**DHS/ICE Office of Chief Counsel - SNA
8940 Fourwinds Drive, 5th Floor
San Antonio, TX 78239**

Name: VALLECILLO-NAVARRO, DOMI...

A 200-888-968

Date of this notice: 5/15/2015

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:
Holmes, David B.

Userteam: Docket

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DSJ

Falls Church, Virginia 20530

File: A200 888 968 – San Antonio, TX

Date: **MAY 15 2015**

In re: DOMINGO VALLECILLO-NAVARRO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Curtis G. White, Esquire

APPLICATION: Reopening

ORDER:

Considering the totality of circumstances presented with the respondent's appeal, which now includes proffered evidence of an approved immediate relative visa petition filed on the respondent's behalf by his United States citizen son, who is serving in the U.S. Marines, the proceedings are reopened under the provisions of 8 C.F.R. § 1003.2(a), and the record will be remanded to the Immigration Judge to provide the respondent an opportunity to pursue an application for adjustment of status.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with this order and entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

LAW OFFICE OF DANIEL CORNO
WHITE, CURTIS G. ESQ.
4214 OLD ARBOR WAY
HUMBLE, TX 77042

IN THE MATTER OF
VALLECILLO-NAVARRO, DOMINGO

FILE A 200-888-968

DATE: Jul 22, 2014

UNABLE TO FORWARD - NO ADDRESS PROVIDED

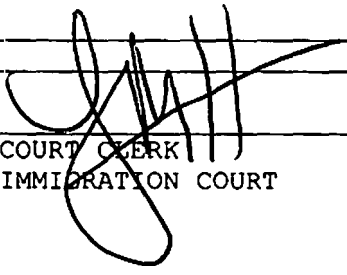
X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. 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 20530

— 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
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

— OTHER: _____


COURT CLERK
IMMIGRATION COURT

FF

CC: ELLIOT R. SELLE
8940 FOURWINDS DR., 5TH FLOOR
SAN ANTONIO, TX, 78239

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

IN THE MATTER OF)

VALLECILLO-NAVARRO, DOMINGO)

Case No. A200-888-968

RESPONDENT)

IN REMOVAL PROCEEDINGS)

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act, as amended:
after admission, you remained in the United States for a time longer than
permitted.

APPLICATION: 8 C.F.R. § 1003.23(b): Motion to reopen

ON BEHALF OF THE RESPONDENT

Curtis G. White, Esq.
Law Office of Daniel Corno
4214 Old Arbor Way
Humble, TX 77346

ON BEHALF OF THE GOVERNMENT

U.S. Immigration & Customs Enforcement
Office of the Chief Counsel
8940 Fourwinds Drive, 5th Floor
San Antonio, TX 78239

WRITTEN DECISION & ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

The respondent is a forty-eight-year-old male, native and citizen of Mexico, who was admitted to the United States at Presidio, Texas, on or about October 15, 2007 as a nonimmigrant visitor with authorization to remain in the United States for a temporary period not to exceed six months. Exhibit 1. On January 12, 2011, the Department of Homeland Security (DHS) personally served the respondent with a Notice to Appear (NTA) charging him as removable pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act (the Act), as amended, in that after admission, you remained in the United States for a time longer than permitted. *Id.*

At a hearing on April 16, 2012, the respondent admitted the allegations and conceded the charge of removal contained in the NTA. Based on the pleadings and the evidence presented, the Court found the charge of removal had been established by clear and convincing evidence and sustained the charge of removal. At a hearing on December 6, 2012, the respondent, through counsel, requested voluntary departure in lieu of removal. The Court granted the respondent's request for voluntary departure. The Court ordered the respondent to voluntarily depart on or before April 5, 2013. The Court further ordered that if the respondent failed to voluntarily depart

within the time granted, an alternate order of removal from the United States to Mexico would become effective.

On March 6, 2013, the respondent, through counsel, filed with the Court a motion to reopen. The DHS filed a response in opposition to the respondent's motion to reopen.

II. Motion to Reopen

An alien may file one motion to reopen removal proceedings. INA § 240(c)(7)(A). The motion must state new facts that will be proven if the motion is granted and must be supported by affidavits or other evidence. INA § 240(c)(7)(B). The alien must file the motion to reopen within 90 days of the date of a final order of removal. INA § 240(c)(7)(C)(i).

In the present case, the Court ordered the respondent to voluntarily depart from the United States and issued the alternative order of removal on December 6, 2012. These orders became final on December 6, 2012 because both parties waived appeal. Because more than 90 days have elapsed between the date of the respondent's final order of removal and the date the respondent filed his motion to reopen, the respondent's motion to reopen is time-barred. INA § 240(c)(7)(C)(i).

The respondent seeks to reopen his removal proceedings on the ground of ineffective assistance of counsel. *See* Respondent's Motion. Counsel claims that the respondent's former counsel did not prepare or file an application for withholding of removal. *See id.* Counsel states that respondent's former attorney advised him that only voluntary departure was available to him. *See id.* Counsel argues that these actions, or lack of action, were ineffective assistance of counsel.

Even if the respondent's motion was not time-barred and the Court was to consider the alleged claim of ineffective assistance of counsel, the respondent's motion would still be denied as the respondent has not complied with the requirements to establish ineffective assistance. *See Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988). To show that the counsel's conduct was egregious, the respondent must provide (1) an affidavit setting forth in detail the actions to be taken by the respondent's attorney and the representations made by the respondent's attorney, (2) evidence that the respondent's former counsel was notified of the allegations and given an opportunity to respond, and (3) evidence as to whether a complaint was filed with appropriate disciplinary authorities and if not, why not. *Id.*; *Matter of Compean, Bengaly, & J-E-C-*, 25 I&N Dec. 1 (A.G. 2009).

Respondent submitted a letter that does not fully notify former counsel of the allegations against him. *See Matter of Lozada*, 19 I&N Dec. at 639. In addition, the respondent did not provide any evidence as to whether a complaint was filed with appropriate disciplinary authorities. *See Matter of Lozada*, 19 I&N Dec. at 639. Thus, the Court finds that the respondent has not established ineffective assistance of counsel and has not complied with the requirements of *Lozada*. *See id.*

The respondent has not established that his motion to reopen is subject to any exception to the filing deadline. INA § 240(c)(7)(C)(ii)-(iv). To have his case reopened to apply for withholding of removal, respondent's claim must be based on "changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous hearing." INA § 240(c)(7)(C)(ii). Respondent's claimed fear of returning to Mexico today appears to be based on being a retired military officer from the Mexican army, which he was when he left Mexico in 2007. The respondent did not allege or establish any changed country conditions as required for reopening removal proceedings on the basis of withholding or removal. *See id.*

III. *Sua Sponte* Reopening

Counsel for the respondent requests the proceedings be reopened *sua sponte*. An Immigration Judge has the power to exercise *sua sponte* authority to reopen any case in which he or she has made a decision. 8 C.F.R. § 1003.23(b)(1). *Sua sponte* reopening is an "extraordinary remedy reserved for truly exceptional situations." *Matter of G-D-*, 22 I&N Dec. 1132, 1134 (BIA 1999). It is not "meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship." *Matter of J-J-*, 31 I&N Dec. 976, 984 (BIA 1997).


Here, counsel for the respondent claims the proceeding should be reopened *sua sponte* because the respondent is a family man and a decorated-retired military officer from the Mexican army. *See* Respondent's Motion. Also counsel requests *sua sponte* reopening so the respondent may apply for withholding of removal. *See id.* The respondent's motion does not establish that he is *prima facie* eligible for withholding of removal or any other relief from removal at this time. *See* INA § 240(c)(7)(C)(ii); 8 C.F.R. § 1003.23(b)(3). Because the respondent provided no evidence of any truly exceptional situation warranting *sua sponte* reopening, the Court declines to reopen the respondent's removal proceedings. *See Matter of G-D-*, 22 I&N Dec. at 1134; *Matter of J-J-*, 31 I&N Dec. at 984.

Accordingly, the following order is hereby entered:

ORDER

IT IS HEREBY ORDERED that the respondent's motion to reopen is **DENIED**.

Date: July 22, 2014



 Glenn P. McPhaul
 United States Immigration Judge