



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: RAMIREZ-SAMUEL, MARCO TU... A 043-998-246

Date of this notice: 8/2/2013

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:
Malphrus, Garry D.
Kendall-Clark, Molly
Guendelsberger, John

williams
Userteam: Docket

Immigrant & Refugee Appellate Center | www.irac.net

SM

Falls Church, Virginia 22041

File: A043 998 246 – Lancaster, CA

Date: AUG - 2 2013

In re: MARCO TULIO RAMIREZ SAMUEL a.k.a. Marco Ramirez

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Richard Mendez, Esquire

ON BEHALF OF DHS: Jonathon Foerstel
Assistant Chief Counsel

On October 5, 2012, the United States Court of Appeals for the Ninth Circuit granted the government's unopposed motion to remand the record to this Board. The case had previously been before us on November 14, 2011, at which time we denied the respondent's motion to reopen proceedings. Upon remand, both parties have submitted supplemental briefing.

In our November 14, 2011, decision, we found that the respondent had not submitted sufficient evidence to support his claim that he was prejudiced by his prior attorney's alleged ineffective assistance of counsel (Bd. Dec. at 1). *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988); *see also Matter of Assaad*, 23 I&N Dec. 553 (BIA 2003). Specifically, we found that while the respondent argued that his prior attorney erred in not pursuing adjustment of status, his motion did not contain an application for adjustment of status, nor did it contain other evidence that he is currently eligible for such relief (Bd. Dec. at 1). In its motion to remand before the Ninth Circuit, the government noted that the respondent, in his motion, also alleged that he suffered ineffective assistance of counsel because his attorney failed to pursue an application for withholding of removal from Guatemala. The government further noted that our previous analysis regarding prejudice was too restrictive, and that the respondent needed only to demonstrate that his previous counsel's ineffective assistance may have affected the outcome of the proceedings. *See Iturribarria v. INS*, 321 F.3d 889 (9th Cir. 2003); *Maravilla Maravilla v. Ashcroft*, 646 F.3d 855 (9th Cir. 2004).

Given the totality of the circumstances, we will vacate our November 14, 2011, decision and remand the record to the Immigration Court to further assess the respondent's eligibility for relief from removal. The respondent has submitted evidence in substantial compliance with *Matter of Lozada*, *supra*, and his motion was filed with due diligence. *See Singh v. Ashcroft*, 367 F.3d 1182, 1186 (9th Cir. 2004); *see also Iturribarria v. INS*, *supra*. Moreover, the respondent's prior attorney indicated that the respondent wanted to apply for asylum, withholding of removal, and protection under the Convention Against Torture at his hearing on March 10, 2011 (Tr. at 7), but no applications were ever presented in court. While we might disagree that the respondent's prior attorney had a duty to tell the respondent to marry his girlfriend, the fact remains that the respondent may now be eligible for adjustment of status in conjunction with a waiver of inadmissibility pursuant to section 212(h) of the Act. Given these circumstances, we find that the respondent's prior attorney's actions may have affected the outcome of his proceedings. *See*

Iturribarria v. INS, supra. As such, we will remand the record to the Immigration Court for further proceedings regarding the respondent's requests for relief from removal.

ORDER: The Board's November 14, 2011, decision is vacated.

FURTHER ORDER: The motion is granted, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing decision.



FOR THE BOARD