



**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*

**Formica, Glenn L., Esq.  
Formica, P.C.  
900 Chapel Street, Suite 1200  
New Haven, CT 06510**

**DHS/ICE Office of Chief Counsel - HAR  
P. O. Box 230217  
Hartford, CT 06123-0217**

**Name: PATINO, LENIN**

**A089-013-179**

**Date of this notice: 1/20/2012**

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.**

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Falls Church, Virginia 22041

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File: A089 013 179 - Hartford, CT

Date: **JAN 20 2012**

In re: LENIN PATINO

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Glenn L. Formica, Esquire

REISSUED DECISION

The respondent moves the Board to reissue the January 15, 2009, Board decision in these removal proceedings to provide him an opportunity to file a timely petition for judicial review. *See* 8 C.F.R. § 1003.2(c); *see also Luna v. Holder*, 637 F.3d 85, 104-05 (2d Cir. 2011). The Department of Homeland Security has not responded to this motion. Considering the totality of circumstances presented, the respondent's unopposed motion will be granted.

ORDER: The respondent's motion is granted, and the Board's decision dated January 15, 2009, is hereby reissued and shall be treated as entered as of today's date.



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FOR THE BOARD

U.S. Department of Justice  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A089 013 179 - Hartford, CT

Date:

In re: LENIN PATINO

JAN 15 2009

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hilda E. Quinto, Esquire

APPLICATION: Voluntary Departure

The respondent, a native and citizen of Ecuador, appeals from the January 23, 2008, decision of an Immigration Judge, finding him removable as charged, and denying him the privilege of voluntary departure as a matter of discretion. The appeal will be dismissed.

On appeal, the respondent states that the Immigration Judge abused his discretion in denying him voluntary departure and in allegedly calling him a "criminal" on the record when his good moral character was not in issue. *See* Notice of Appeal from a Decision of an Immigration Judge. He also contends that he was denied due process by the Immigration Judge and that his attorney rendered ineffective assistance of counsel. *Id.*

This Board reviews findings of fact by the Immigration Judge to determine whether such findings are clearly erroneous. This Board conducts *de novo* review of all questions of law, discretion, and judgment. *See* 8 C.F.R. §§ 1003.1(d)(3)(i) and (ii) (2008).

Upon *de novo* review, we find that the denial of voluntary departure was not an abuse of discretion. We specifically note that there was no error in the Immigration Judge's finding that the respondent has a criminal record; the respondent acknowledged during the hearing that he does have a criminal record, and its presence and the nature of that record are appropriate factors to weigh in deciding whether to favorably exercise discretion in the respondent's favor (I.J. at 2:14-6, 14:11). *See Matter of Arguelles*, 22 I&N Dec. 811, 817 (BIA 1999), *citing to Matter of Gambod*, 14 I&N Dec. 244 (BIA 1972) (many factors may be weighed in exercising discretion, including the nature and underlying circumstances of the deportation ground at issue; additional violations of the immigration laws; the existence, seriousness, and recency of any criminal record; and other evidence of bad character or the undesirability of the applicant as a permanent resident). We note moreover that the statements provided on appeal fail to meaningfully address the Immigration Judge's exercise of discretion or his consideration of the factors of record.

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To the extent that the respondent is challenging the fundamental fairness of these proceedings, his generalized assertions neither prove that he suffered prejudice as a result of how the Immigration Judge conducted these proceedings nor prove that he suffered prejudice as a result of his prior attorney's representation of him. As to the latter, the respondent vaguely states on appeal that his attorney "failed to request available relief." It is not clear what other relief he believes he was eligible for, besides voluntary departure (Tr. at 4) (statutorily ineligible for cancellation of removal). While the respondent did testify below, contrary to his attorney's representation, that he entered the United States in 1990 (Tr. at 3, 5), which would suggest possible eligibility for cancellation of removal, he has failed to provide any additional evidence to clarify the issue of his date of entry or otherwise demonstrate that his counsel rendered deficient performance in representing him on this claim. *See Matter of Compean, Bangaly & J-E-C-*, 24 I&N Dec. 710 (A.G. 2009), *overruling in part Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), and *Matter of Assaad*, 23 I&N Dec. 553 (BIA 2003) (changing the substantive standards (effective immediately and for all claims and motions) and the procedural standards (effective prospectively, for future claims and motions only) by which claims involving attorneys will be judged, and holding that such claims will now be called "deficient performance of counsel" claims). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

  
FOR THE BOARD

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