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

Rilo-Manito, Nora M
Law Offices of Angel F Leal, Jr
2001 NW 107 Avenue
Suite 230
Doral, FL 33172

DHS/ICE Office of Chief Counsel - MIA
333 South Miami Ave., Suite 200
Miami, FL 33130

Name: RAYO ESPINOZA, ERICK

A 077-893-487

Date of this notice: 7/29/2020

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:
Swanwick, Daniel L.

Userteam: Docket

File: A077-893-487 - Miami, FL

Date: JUL 29 2020

In re: ERICK RAYO ESPINOZA

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Nora M. Rilo-Manito, Esquire

APPLICATION: Reopening; termination

This is the second time this case is before us.[1] In the instant matter, the respondent, a native and citizen of Nicaragua and lawful permanent resident of the United States, moves us to reopen and terminate proceedings in order for him to apply for naturalization. The Department of Homeland Security has not responded to the motion. We will reopen and terminate proceedings.

The respondent is the recipient of an approved I-130 visa petition filed on his behalf by his mother and the priority date of April 30, 2001, is immediately available. After his visa became immediately available, the respondent moved United States Immigration and Customs Enforcement ("ICE") to jointly reopen proceedings so that he could adjust his status. ICE declined, correctly informing the respondent that United States Citizenship and Immigration Services ("USCIS") retained jurisdiction to adjudicate his adjustment of status application because he is an arriving alien (Respondent's Mot. at Tab D). The respondent then filed his adjustment of status application with USCIS, who granted the application on June 5, 2013 (*Id.* at Tab C).

On March 14, 2018, the respondent filed his application for naturalization with USCIS. On September 24, 2019, USCIS denied the application, concluding it should have denied his Form I-485 adjustment of status application for lack of jurisdiction because the respondent had an outstanding order of removal (Respondent's Mot. at Tab E). USCIS erred in denying the respondent's naturalization application because USCIS has jurisdiction over adjustment of status applications from arriving aliens, except for a narrow exception not applicable to this case. *See* 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1)(ii); *Matter of Silitonga*, 25 I&N Dec. 89, 91 (BIA 2009); *Matter of Yauri*, 25 I&N Dec. 103, 106 (BIA 2009). *See also* 8 C.F.R. § 1001.1(q) (defining "arriving alien").

We conclude that this error constitutes a compelling reason to *sua sponte* reopen proceedings. 8 C.F.R. § 1003.2(a). Thus, we will grant the respondent's motion, and will reopen and terminate proceedings. *See* 8 C.F.R. § 1239.2(f); *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462, 466 (A.G.

[1] On May 8, 2006, an Immigration Judge found the respondent removable as charged and denied his application for adjustment of status under section 202 of the Nicaraguan and Central American Relief Act ("NACARA") because he "aged out" during the application process and no longer was eligible for relief as the child of a NACARA applicant. The respondent appealed, and we dismissed his appeal on April 1, 2008.

2018) (allowing for termination of removal proceedings "to permit the alien to proceed to a final hearing on a pending application or petition for naturalization when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing humanitarian factors").

Accordingly, the following order will be issued.

ORDER: The respondent's proceedings are reopened and the proceedings are terminated.

FOR THE BOARD