U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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CASTRENCE, REDENTOR CELINO
A040-495-188
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Name: CASTRENCE, REDENTOR CELI... **A 040-495-188**

Date of this notice: 6/21/2013

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:
Neal, David L
Kendall-Clark, Molly
Greer, Anne J.

yungc
Userteam: Docket

File: A040 495 188 – San Diego, CA Date: JUN 21 2013

In re: REDENTOR CELINO CASTRENCE

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Kerri Calcador
Senior Attorney

APPLICATION: Reopening

This case was last before the Board on October 12, 2012, when we dismissed the respondent's appeal from an Immigration Judge's decision finding the respondent removable as charged and ineligible for relief from removal. The respondent filed a motion to reopen with the Board on April 29, 2013.[1] The Department of Homeland Security ("DHS") has opposed the motion. The motion will be denied.

We review for clear error the findings of fact, including the determination 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).

As an initial matter, the respondent's motion to reopen is untimely. *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2) (motions to reopen shall be filed within 90 days of final administrative removal order). Moreover, the respondent does not assert any explanation for the delay in filing which would excuse the untimeliness. Furthermore, the evidence upon which the motion is based, namely medical records from October 2011 through March 2012, was previously available and could have been presented earlier. *See* 8 C.F.R. § 1003.2(c)(1) (motion to reopen shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing).

Furthermore, consideration of this evidence would not likely change the result in this case. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992). The respondent argues that the stroke he suffered in 2011 affected his ability to communicate and rendered him incompetent to represent himself in removal proceedings at the July 11, 2012, hearing (Resp. Motion, at 1). In *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), we held that the test for determining whether

[1] The respondent originally filed the motion with the Immigration Judge on February 4, 2013, but as the Board has jurisdiction over the motion, it was refiled with the Board on April 29, 2013. *See* 8 C.F.R. §§ 1003.2(a) and 1003.23(b)(1); *Matter of C-W-L*, 24 I&N Dec. 346 (BIA 2007).

an alien is competent to participate in immigration proceedings is whether he or she has a rational and factual understanding of the nature and object of the proceedings, can consult with the attorney if there is one, and has a reasonable opportunity to examine and present evidence and cross-examine witnesses. *Id.* at 479. If there are indicia of incompetency, the Immigration Judge must make further inquiry to determine whether the alien is competent for purposes of immigration proceedings. *Id.* at 480. However, absent indicia of mental incompetency, an Immigration Judge is under no obligation to analyze an alien's competency. *Id.* at 477.

The respondent submitted evidence indicating that he suffered a stroke in October 2011. Although the records reflect that the respondent still has some right side weakness and needs a cane to walk, his mental state was noted as "mentally alert and appropriate" in the December 19, 2011, neurological follow up report (Resp. Motion, untabbed exhibits). Although the respondent reported to his doctors on February 17, 2012, that he was having difficulty finding and pronouncing words, the subsequent records submitted by the respondent make no mention of the problem. In fact, on the March 13, 2012, disability verification form, the boxes for speech impairment are not checked, and the form explicitly states that the respondent has no communication issues. *Id.*

Moreover, there is no indication in the transcript that the respondent had any difficulty communicating or articulating his position before the Immigration Judge. Both the Immigration Judge and the Board noted the respondent's stroke, but nothing in the record indicates that the stroke adversely affected the respondent's ability to represent himself or deprived him of a rational and factual understanding of the nature and object of the proceedings. Therefore, the Immigration Judge was under no obligation to inquire further as to the respondent's mental competence. *Matter of M-A-M-*, *supra*, at 477.

We further note that the DHS submitted its own records relating to the medical treatment of the respondent while in its custody (DHS Response, Exh. A). Notably, the June 28, 2012, intake assessment, dated only 2 weeks prior to the hearing, states that although the respondent has an "unstable gait" due to the stroke, he "appears to have normal physical/emotional characteristics and no barriers to communication." *Id.* at 4. It goes on to state that the respondent is oriented to person, place and time. *Id.* Likewise, in the evaluation made on July 16, 2012, just days after the hearing, there is no mention of any complaint aside from difficulty walking. *Id.* at 30-31. The only time the respondent mentions difficulty communicating is at the December 28, 2012, appointment, 6 months after the hearing and Immigration Judge's decision, and 2 months after the Board dismissed his appeal. *Id.* at 53.

Therefore, even considering the substance of the respondent's untimely motion, the evidence would not likely change the result in this case, as the evidence is insufficient to establish that the respondent's communication difficulties were present at the time of the hearing or at the time he filed his appeal. *See Matter of Coelho*, *supra*. For these same reasons, we decline to exercise our limited authority to reopen sua sponte. *See* 8 C.F.R. § 1003.2(a). The Board's discretion to reopen a case sua sponte is "an extraordinary remedy reserved for truly exceptional situations," and we are not persuaded that such circumstances present themselves in this instant case. *See Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999); *see also Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997).

Accordingly, the motion will be denied.

ORDER: The respondent's motion is denied.

FOR THE BOARD