



**U.S. Department of Justice**

**Executive Office for Immigration Review**

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Office of the Clerk*

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**Name: ACEVEDO, MILAGRO DEL CAR...      A 070-552-239**

**Date of this notice: 3/2/2020**

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:  
Couch, Stuart V.

Handy  
Userteam: Docket

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Falls Church, Virginia 22041

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File: A070-552-239 – Los Angeles, CA

Date:

**MAR - 2 2020**

In re: Milagro Del Carmen ACEVEDO

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Aram Mekharian, Esquire

APPLICATION: Reopening

This matter was last before the Board on August 8, 1997, when we dismissed the respondent's appeal from the Immigration Judge's May 17, 1996, decision that denied her applications for asylum and withholding of deportation, and granted the respondent voluntary departure. The respondent, who was subsequently granted Temporary Protected Status (TPS), has now moved to reopen so that she may pursue adjustment of status based upon an approved visa petition filed by her United States citizen daughter. The Department of Homeland Security (DHS) has not responded to the motion. The motion will be granted, and the record remanded.

A motion to reopen proceedings must be filed with the Board within 90 days after the mailing of the Board's decision. See section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). The respondent's motion to reopen was filed over 20 years after our prior decision in this matter, and is therefore time-barred. However, motions which exceed the filing deadline may be granted upon a showing of "exceptional circumstances," in the exercise of discretion. See *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). The respondent requests that the Board exercise its sua sponte authority to reopen the proceedings based upon a change of law that makes her potentially eligible for adjustment.

A fundamental change of law may be sufficient to justify sua sponte reopening. See *Matter of G-D-*, 22 I&N Dec. 1132, 1134-35 (BIA 1999). Here, the respondent relies on the decision of the United States Court of Appeals for the Ninth Circuit in *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017) (holding that a grant of Temporary Protected Status is an admission for purposes of applying for adjustment of status), to establish that she is prima facie eligible for the relief she seeks. This case represents a fundamental change in law, as it is contrary to our understanding of what constitutes an admission. We respectfully disagree with the Ninth Circuit's legal analysis for the reasons set forth in the decision of United States Citizenship and Immigration Services in *Matter of H-G-G-*, 27 I&N Dec. 617 (AAO 2019). However, as this matter arises within the jurisdiction of the Ninth Circuit, we are bound to apply the holding in *Ramirez v. Brown* unless or until it is overturned. See *Matter of Anselmo*, 20 I&N Dec. 25, 30-32 (BIA 1989).

We generally require a respondent to demonstrate due diligence for a favorable exercise of discretion. See, e.g., *Matter of Sibrun*, 18 I&N Dec. 354 (BIA 1983) (requiring an alien to demonstrate due diligence to be granted a continuance in the exercise of discretion). Here, the respondent did not file her motion until more than two years after the Ninth Circuit issued *Ramirez v. Brown*. However, our consideration of this delay is tempered by our recognition that the

respondent was already in lawful immigration status through TPS. Under the circumstances, we conclude that due diligence is satisfactorily demonstrated. Accordingly, we will grant the respondent's motion and return the record to the Immigration Court to determine if the respondent is otherwise eligible for and deserving of adjustment of status.

The following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.

  
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FOR THE BOARD