

2019 Immig. Rptr. LEXIS 7234

Decision of the Board of Immigration Appeals

Date: JUL 16 2019

File: A095-071-829 - Miami, FL

BIA & AAU Non-Precedent Decisions

Reporter

2019 Immig. Rptr. LEXIS 7234 *

In re: Melvin Adonay MEJIA a.k.a. Melvin Adonay Mejia Rodriguez

Core Terms

respondent's, motion to reopen, immigration judge, terminate the proceeding, removal proceedings, motion to dismiss, nonimmigrant, terminate, cancel, moot

Counsel

ON BEHALF OF RESPONDENT: Atara Eig, Esquire

ON BEHALF OF DHS: Patricia B. Kelly Le BienvenuAssistant Chief Counsel

[*1] IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

APPLICATION: Termination

Opinion

This case was last before the Board on November 24, 2017, when we remanded the record to the Immigration Judge to adjudicate the respondent's motion to reopen to apply for asylum and withholding of removal. In a decision dated January 29, 2018, the Immigration Judge denied the respondent's motions to reopen and stay removal. The Immigration Judge certified the case back to the Board. The respondent

now proffers evidence that he has been granted a nonimmigrant T visa by the U.S. Citizenship and Immigration Services, and he requests that the Board dismiss his appeal as moot.

The respondent's motion to dismiss his appeal as moot relies on a federal regulation that stated "[i]f the Service grants an application for T nonimmigrant status, the final order [of removal] shall be deemed canceled by operation of law as of the date of the approval." [8 C.F.R. § 214.11\(d\)\(9\) \(2016\)](#). Effective January 18, 2017, that regulation was superseded by a regulation which provides that an applicant who is the subject of a removal order "may seek cancellation of such order by filing a motion to reopen [*2] and terminate proceedings with the immigration judge or the Board. ICE may agree, as a matter of discretion, to join such motion to overcome any applicable time and numerical limitations of [8 C.F.R. §§ 1003.2](#) and [1003.23](#)." *See* [81 Fed. Reg. 92266, 92307 \(Dec. 19, 2016\)](#) (codified at [8 C.F.R. § 214.11\(d\)\(9\)\(ii\) \(2017\)](#)). Thus, we will treat the respondent's motion to dismiss the appeal as a motion to terminate the proceedings.

Considering the totality of the circumstances presented with the respondent's motion, including the lack of opposition by the Department of Homeland Security, we will sustain the respondent's appeal, sua sponte grant his motion to reopen, and terminate the proceedings without prejudice. *See* [8 C.F.R. § 1003.2\(g\)\(3\)](#).

ORDER: The respondent's appeal is sustained, the motion to reopen is granted, and removal proceedings are terminated without prejudice.

FOR THE BOARD

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