



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: [REDACTED] [REDACTED]

Date of this notice: 9/28/2012

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:
Miller, Neil P.

Falls Church, Virginia 22041

File: [REDACTED] - Lancaster, CA

Date: SEP 28 2012

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Anish Vashistha, Esquire

APPLICATION: Reconsideration

ORDER:

The respondent has filed a "motion to reconsider" the Board's July 13, 2012, decision denying his motion to reopen proceedings in which the Board dismissed his appeal on December 18, 2000. As the Department of Homeland Security has not responded to the motion, it is deemed unopposed. 8 C.F.R. § 1003.2(g)(3). The record is remanded.

In his motion the respondent has not identified any error in the Board's prior decision. Rather, he submits and asks for consideration of a letter from [REDACTED], a California Deputy District Attorney (Motion, Tab B). As such, the motion is more accurately identified as one seeking reopening. *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006); *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992); 8 C.F.R. §§ 1003.2(b), (c). It is both statutorily time and number-barred. Section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2). The letter written by [REDACTED] states that [REDACTED] was not the prosecuting attorney in the respondent's criminal case, and that [REDACTED] statements are based on her review of the Court Docket and Minutes as [REDACTED] office does not have the respondent's file or any other documentation regarding the case. [REDACTED] states that, from her review of the Court Docket and Minutes, that the respondent had only been convicted of violating California Penal Code Section 415(a), and not California Health and Safety Code Section 11550(a).

In light of the significance of this letter, and given the varying evidence regarding the respondent's conviction history as noted in our prior decision, we find it appropriate to sua sponte reopen and remand the record to afford an Immigration Judge the opportunity to review and evaluate this new evidence. *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997); 8 C.F.R. § 1003.2(a). Accordingly, the motion is granted, and the record is remanded to the Immigration Judge for further review and the entry of a new decision.



FOR THE BOARD