



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*

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Name: [REDACTED] [REDACTED]

Date of this notice: 2/12/2016

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:
Holmes, David B.

EllisM

Userteam: Docket

Falls Church, Virginia 22041

File: [REDACTED] - San Francisco, CA

Date:

FEB 12 2016

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Anish Vashistha, Esquire

ON BEHALF OF DHS: Lowell C. Powell
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Reopening

The respondent has filed an untimely and number-barred motion to reopen, through which he seeks reopening and rescission of the in absentia order of removal that was entered in his case on March 17, 2004, and raises a number of arguments regarding ineffective assistance of counsel. The Department of Homeland Security (DHS) opposes the motion. These proceedings will be reopened and the record remanded.

Considering the totality of circumstances presented in the respondent's motion, we find it appropriate to exercise our discretion to reopen these proceedings sua sponte. 8 C.F.R. § 1003.2(a); *Matter of J-J*, 21 I&N Dec. 976 (BIA 1997). Upon review of the record, it is not clear that the respondent was removable as charged at the time of the entry of the removal order, based on his 1985 conviction. See *Ledezma-Galicia v. Holder*, 636 F.3d 1059 (9th Cir. 2010). Moreover, even if removable, he was a long-time permanent resident of the United States who would have been eligible to pursue an application for a waiver of inadmissibility under section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c). We are persuaded that the proceedings should be reopened and the in absentia order of removal rescinded. Accordingly, the following orders are entered.

ORDER: The motion to reopen is granted, these proceedings are reopened, and the in absentia order of removal is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD