

上诉委员会成功开案-客人曾经错误的承认犯罪记录

客人曾经在 2003 年上庭期间被移民法官质问是否有过两项违反药物管制条例的罪行。客人由于当时在庭上过于紧张，没有听清楚法官的问题而鲁莽的回答是，结果法官认为客人的回答等同于承认犯罪，于是拒绝客人所有的移民申请并下达递解令。

在 2008 年的时候，客人和一位美国公民结婚并通过其他律师向上诉委员会递交了打开案子的申请。上诉委员会认同移民法官当时的判案结果，拒绝了上诉的申请。

在 2011 年，客人聘请我们向上诉委员会递交了申请开案的动议（Motion to Reopen）。我们做了详细的陈述并递交了相关的材料证明客人从未犯有违反药物管制条例的罪行。上诉委员会认为虽然客人的申请超过了法定的时间和次数，但是根据其充分的材料证明和特殊的情况酌情行驶了“裁量权”（Sua Sponte），最后成功的打开了这案子。

Please see the attachment(s) in the next page(s).

Disclaimer: This material is not intended to provide legal advice on any specific concern that the reader may have. The successful outcome of the case described above does not in any way guarantee a similar outcome in any specific legal matter concerning the reader. The reader should seek the advice of any counsel if he or she has a specific immigration problem.
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U.S. Department of Justice

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Name: [REDACTED]

A [REDACTED]

Date of this notice: 4/4/2012

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:

[REDACTED]

Falls Church, Virginia 22041

File: A[REDACTED] - Los Angeles, CA

Date: APR -4 2012

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Charles Medina, Esquire

ON BEHALF OF DHS: Christie Woo-Thibodeaux
Assistant Chief Counsel

APPLICATION: Reopening; stay of removal

The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen his removal proceedings. In our decision dated May 24, 2004, we dismissed the respondent's appeal from the Immigration Judge's decision which found him removable and determined that he was ineligible for cancellation of removal for certain nonpermanent residents and voluntary departure. We will reopen proceedings sua sponte.

The respondent's motion to reopen (filed in November of 2011) is untimely and number barred.¹ The respondent moves to reopen proceedings to apply for adjustment of status based on an approved visa petition filed on his behalf by his U.S. citizen spouse (Motion Exh. C). We will reopen proceedings sua sponte because the respondent presents an exceptional situation which warrants sua sponte reopening. *See Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997) (the Board's power to reopen or reconsider cases sua sponte is limited to exceptional situations and is not meant to cure filing defects or circumvent the regulations, where enforcing them might result in hardship).

The pertinent facts and history of the case are as follows. The respondent testified at the April 2, 2003, hearing that he had a 2001 conviction for possession of marijuana (Tr. at 21). The respondent further testified that he had a 2002 conviction for being under the influence of marijuana (Tr. at 22-23). There are no conviction records in the record of proceeding. The Immigration Judge determined that the respondent was ineligible for cancellation of removal for certain nonpermanent residents and voluntary departure (I.J. at 3-4).

The respondent states in his motion that he was confused about the extent of his criminal convictions during questioning by the Immigration Judge and admitted to having two controlled substance convictions, which do not exist. The respondent presents his FBI identification record ("FBI ID record") updated through March 17, 2010 (Motion Exh. A). No controlled substance

¹ We denied the respondent's previous motions to reopen in decisions dated January 5, and August 31, 2009.

convictions (or even charges) are listed for the respondent. In *Cheuk Fung S-Yong v. Holder*, 600 F.3d 1028, 1036 (9th Cir. 2010), *amending and superseding* 578 F.3d 1169 (9th Cir. 2009), the court held that the Immigration Judge's finding that the alien was barred from seeking relief from removal is flawed because there is no document in the record that proves he was convicted of an aggravated felony. We thus will reopen proceedings sua sponte and remand the record to the Immigration Judge to allow the respondent to apply for adjustment of status. Because we will reopen proceeding sua sponte and remand the record to the Immigration Judge for further proceedings, the respondent's stay request has been rendered moot.

A review of the FBI ID Record indicates that the respondent may be required to apply for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), in conjunction with his application for adjustment of status. Further, the respondent may be inadmissible under section 212(a)(2)(A)(i)(I) of the Act [crime involving moral turpitude]. See 8 C.F.R. § 1003.1(d)(3)(iv) (the Board may take administrative notice of the contents of official documents). On remand, the Department of Homeland Security may lodge additional allegations and an additional charge of inadmissibility if it deems it advisable to do so.

Accordingly, the following orders will be entered.

ORDER: We reopen proceedings sua sponte.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings and for the issuance of a new decision, consistent with this opinion.



FOR THE BOARD