

Law Office of

Charles Medina

BIA Reopens Case After Prior Dismissals

By The Ninth Circuit And The BIA

In 2005, the Immigration Judge (IJ) waived Client's inadmissibility due to a criminal conviction. The Government appealed to the Board of Immigration Appeals (BIA). In 2007, the BIA reversed the IJ's decision and remanded the case for further proceedings. Client, through prior counsel, filed a petition with the Ninth Circuit, which was dismissed in 2008. In 2010, the IJ granted Client voluntary departure. Client, still through prior counsel, filed another petition with the Ninth Circuit, which was promptly dismissed.

Client then came to us for help. We noticed that instead of appealing the IJ's 2010 decision to the BIA, Client went directly to the Ninth Circuit. As a result, he lost his appeal rights to the BIA but the Ninth Circuit could not entertain his petition because he bypassed the BIA.

We filed a motion to reopen with the BIA due to the serious errors of prior counsel. In 2011, the BIA reopened the case and gave Client another opportunity to present his arguments and win relief. The reopening of the case also saved Client from imminent removal since ICE had already ordered him to report for removal.

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

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: [REDACTED]

A [REDACTED]

Date of this notice: 6/2/2011

Enclosed is a copy of the Board's interim decision 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: JUN - 2 2011

In re: [REDACTED]

IN DEPORTATION PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Charles Medina, Esquire

INTERIM ORDER

On March 28, 2011, the respondent filed a motion to reopen with the Board wherein he maintains that he received ineffective assistance of counsel as, subsequent to the Immigration Judge's July 6, 2010 decision, his prior attorney filed a petition for review with the United States Court of Appeals for the Ninth Circuit instead of properly filing an appeal with the Board. In effect, the respondent is requesting that the Board certify this matter in view of his prior attorney's ineffective assistance of counsel. *See* 8 C.F.R. § 1003.1(c) (2010). With his motion, the respondent has presented evidence that he has complied with the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). We further conclude that the respondent has demonstrated due diligence in discovering his prior counsel's ineffective assistance.

Based upon the unique facts presented in the respondent's motion, as well as a lack of opposition from the Department of Homeland Security, we find that it is appropriate to consider this matter on certification. At the present time, we express no opinion as to the merits of the respondent's claim that he is eligible for relief.

INTERIM ORDER: The matter is accepted by certification.

FURTHER INTERIM ORDER: A briefing schedule shall be set to afford the parties an opportunity to file a brief.



FOR THE BOARD