U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: VILLEDA-MEJIA, RUDY

A 088-367-378

Date of this Notice: 03/10/2026

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

John Seiler
Acting Chief Clerk

Enclosure

Userteam: Docket

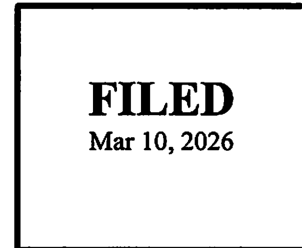
NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Rudy VILLEDA-MEJIA, A088-367-378

Applicant



ON BEHALF OF APPLICANT: William Frick, Esquire

IN WITHHOLDING ONLY PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Picos, Temporary Appellate Immigration Judge[1]

PICOS, Temporary Appellate Immigration Judge

This case was last before the Board on October 11, 2023, when we denied a motion filed by the applicant seeking reopening of July 20, 2017, final administrative decision dismissing his appeal. On April 14, 2025, the applicant submitted a motion to reopen, which he supplemented with additional evidence on April 22, 2025, and May 15, 2025. The motion will be denied.

We find no basis to reopen proceedings. The relief sought is unavailable in "withholding only" proceedings. 8 C.F.R. § 1208.3l(g)(2)(i) (providing that in "withholding only" proceedings, an Immigration Judge "shall consider only the [applicant's] application for withholding of removal under 8 CFR § 1208.16 and shall determine whether the [applicant's] removal to the country of removal must be withheld or deferred."). The applicant's motion seeking adjustment of status must be filed in his separate removal proceedings and the motion to reopen filed in the removal proceedings must comply with the requirements of section 240(c)(7)(C)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(iv).

In addition, the applicant's motion is statutorily time and number barred because it is his second such motion and was filed more than 7 years after the Board's final administrative decision. Section 240(c)(7)(C)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). The applicant avers that the statutory deadline should be equitably tolled because he is now the beneficiary of a visa petition which was approved in 2016 that was filed on his behalf by his wife when she was a lawful permanent resident (Motion at 6-7, Tab A).[2] He states that when she became a naturalized United States citizen on

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] In his May 15, 2025, supplemental submission the applicant avers that he is eligible for a visa under INA § 101(a)(15)(T) ("T visa"), 8 U.S.C. § 1101(a)(15)(T) (5/15/25 Suppl. at 4, 11). While (continued…)

June 28, 2023, this visa petition was automatically converted as he is now her immediate relative for immigration purposes (Motion at 6-7, Tab B). As such, he contends that he is now eligible for adjustment of status and his proceedings should be reopened. The applicant seeks equitable tolling of the motion's deadline (Motion at 6-7).[3]

The circuit where this case arises has held that equitable tolling applies where "despite all due diligence, the party invoking equitable tolling is unable to obtain vital information bearing on the existence of the claim." *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc). "The party's ignorance of the necessary information must have been caused by circumstances beyond the party's control." *Valeriano v. Gonzales*, 474 F.3d 669, 673 (9th Cir. 2007). However, the applicant was not prevented from filing his motion in a timely manner because of circumstances beyond his control but because he was not then eligible for adjustment of status. The applicant's becoming eligible for adjustment of status after the expiration of the deadline for filing a motion to reopen is not, without more, a basis for equitable tolling of the motion's deadline or the number bar. *See Ray v. Gonzales*, 439 F.3d 582, 588–90 (9th Cir. 2006).

Although the applicant argues otherwise, the Constitution does not provide aliens with a fundamental right to reside in the United States simply because other members of their family are citizens or lawful permanent residents (Motion at 7-14). *De Mercado v. Mukasey*, 566 F.3d 810, 816 n.5 (9th Cir. 2009). The applicant asserts that *Zerezghi v. USCIS*, 955 F.3d 802 (9th Cir. 2020) holds otherwise, contending that it defines the right to reside with family as a fundamental liberty interest (Motion at 14). We disagree.[4] In that case the circuit court held that a petitioner's procedural due process rights are violated in an I-130 petition adjudication when the government uses undisclosed records to find marriage fraud and discussed the United States Citizenship and Immigration Services' burden of proof in making a marriage fraud determination. *Zerezghi v. USCIS*, 955 F.3d at 809-10, 816. That case is unavailing as it did not make the finding asserted by the applicant. To the extent that the applicant avers that unspecified immigration-related statutes are unconstitutional, "[i]t is well settled that we lack jurisdiction to rule on the constitutionality of the [INA] and the regulations we administer." *Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997).

In closing, we decline to exercise our discretionary authority to reopen these proceedings sua sponte. 8 C.F.R. § 1003.2(a). As a general rule, our sua sponte authority is used sparingly and it

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the applicant states he will be filing an application for a T visa and will submit evidence of the same, no evidence has been proffered reflecting that he has filed such an application. As such, reopening on this basis is not warranted (5/15/25 Suppl. at 9).

[3] The applicant also generally avers that he is entitled to equitable estoppel (Motion at 6). However, he does not expound on this bare assertion in any manner in his motion or supplemental submissions. Therefore, we shall address this no further.

[4] The applicant's reliance on *Matter of Velarde*, 23 I&N Dec. 253, 256 (BIA 2002) is similarly misplaced as that case expressly related to timely motions to reopen, but the applicant's motion is untimely (5/15/25 Suppl. at 11).

is not used as a general remedy for any hardships created by enforcement of the time and number limits in the motions' regulations, but as an extraordinary remedy reserved for truly exceptional situations. *See Matter of G-D-,* 22 I&N Dec. 1132,1133-34 (BIA 1999); *see also Matter of Jean,* 23 I&N Dec. 373, 380 n.9 (A.G. 2002). We find no basis to reopen proceedings. The relief sought is unavailable in "withholding only" proceedings. 8 C.F.R. § 1208.3l(g)(2)(i) (providing that in "withholding only" proceedings, an Immigration Judge "shall consider only the [applicant's] application for withholding of removal under 8 CFR § 1208.16 and shall determine whether the [applicant's] removal to the country of removal must be withheld or deferred."). The applicant's motion must be filed in his separate removal proceedings, which became final well before the instant proceedings were initiated.1 1 We note that a motion to reopen filed in the removal proceedings would have to comply with the requirements of section 240(c)(7)(C)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(iv)The respondent is in withholding only proceedings and therefore even if these proceedings were reopened, he would be ineligible to pursue adjustment of status in withholding only proceedings. Further, becoming potentially eligible to adjust status after the expiration of the 90-day time limitation on reopening is not an exceptional situation. *See Matter of Yauri,* 25 I&N Dec. 103, 105 (BIA 2009) (noting that untimely motions to reopen to apply for adjustment of status do not fall within any exception to the regulatory and statutory exceptions to the time limits on motions and will generally be denied); *see also Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (holding that the Board's power to reopen or reconsider cases sua sponte is limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations, where enforcing them might result in hardship); 8 C.F.R. § 1003.2(a).

Accordingly, the following order shall be entered.

ORDER: The motion is denied.

NOTICE: If an applicant is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by the Department of Homeland Security, or conspires to or takes any action designed to prevent or hamper the applicant's departure pursuant to the order of removal, the applicant shall be subject to a civil monetary penalty of up to $998 for each day the applicant is in violation. *See* section 274D of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324d; 8 C.F.R. § 280.53(b)(14). Further, any applicant that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. *See* INA § 276(a), 8 U.S.C. § 1326(a).