

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
OAKDALE, LOUISIANA**

**IN THE MATTER OF**

[REDACTED]

**Respondent**

**IN REMOVAL PROCEEDINGS**

**File No.:**

[REDACTED]

**CHARGE:**

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, as an alien, who at any time after admission, has been convicted of an aggravated felony as defined in section 101(a)(43)(B) of the Act, an offense relating to the illicit trafficking in a controlled substance (as described in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of Title 18 of the United States Code).

**MOTIONS:**

Respondent's Statutory Motion to Reopen to Terminate Proceedings Based on Vacated Conviction and Alternative Request for Regulatory Sua Sponte Reopening

Joint Motion to Reopen to Dismiss Proceedings Based on Vacated Conviction

**On Behalf of Respondent**

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**On Behalf of the Government**

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**DECISION OF THE IMMIGRATION JUDGE**

**I. PROCEDURAL & FACTUAL HISTORY**

On February 21, 2007, the Department of Homeland Security, United States Immigration and Customs Enforcement ("DHS") issued a Notice to Appear ("NTA"), alleging that Respondent is a native and citizen of [REDACTED] whose status was adjusted to lawful permanent resident on [REDACTED] 2003 under section 245 of the Immigration and Nationality Act ("Act"). The DHS further alleged that Respondent was convicted on January 2, 2007 in the Lawrence District Court at Lawrence, Massachusetts for Drug Distribution, Class B, to wit: Cocaine in violation of section 32A(a) of chapter 94C of the Massachusetts General Law. Based on these allegations, the DHS charged Respondent as removable pursuant to section

237(a)(2)(A)(iii) as defined in section 101(a)(43)(B) of the Act. On September 10, 2007, the Court found Respondent removable as charged and ordered him removed from the United States to [REDACTED].

On July 29, 2014, the Court received Respondent's Statutory Motion to Reopen to Terminate Proceedings Based on Vacated Conviction and Alternative Request for Regulatory Sua Sponte Reopening. On August 1, 2014, the Court received the DHS's request for an extension of time to respond to Respondent's motion. Thereafter, the parties submitted a Joint Motion to Reopen to Dismiss Proceedings Based on Vacated Conviction.

## II. APPLICABLE LAW

An Immigration Judge may upon his or her own motion at any time, or upon motion of the DHS or the alien, reopen any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1003.23(b)(1) (2013). A motion to reopen "seeks to reopen proceedings so that new evidence can be presented and so that a new decision can be entered, normally after a further evidentiary hearing." Matter of Cerna, 20 I&N Dec. 399, 403 (BIA 1991). A motion to reopen must state the new facts that will be proven if the motion is granted and must be supported by affidavits and other evidentiary material. 8 C.F.R. § 1003.23(b)(3). Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. Id. A motion to reopen will not be granted unless the Court is satisfied that the evidence sought to be offered is "material and was not available and could not have been discovered or presented at the former hearing." Id. The Court cannot grant a motion to reopen seeking to apply for relief if the Immigration Judge fully explained the right to apply for such relief and provided an opportunity to apply for the relief. Id.

Additionally, a motion to reopen is subject to time and numerical limitations. A respondent can only file one motion to reopen. 8 C.F.R. § 1003.23(b)(1). The motion must be filed within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before September 30, 1996, whichever is later. Id. These limitations shall not apply if the basis of the motion is to apply for asylum or withholding of removal under the Convention Against Torture, and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. Id. at § 1003.23(b)(4)(i).

## III. ANALYSIS & CONCLUSION

Although the motions to reopen do not comply with the time limitations under the regulations, and the Court is compelled to reopen the proceedings *sua sponte* on account of the parties' joint motion. The Court will grant the joint motion to reopen and will vacate the [REDACTED], 2007 order of removal.

Accordingly, the following order is hereby entered:


**ORDER: IT IS HEREBY ORDERED** that Respondent's Statutory Motion to Reopen to Terminate Proceedings Based on Vacated Conviction and Alternative Request for Regulatory Sua Sponte Reopening is **DENIED**.

**IT IS HEREBY FURTHER ORDERED** that the Joint Motion to Reopen to Dismiss Proceedings Based on Vacated Conviction is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that the [REDACTED] 2007 order of removal is **VACATED**.

**IT IS HEREBY FURTHER ORDERED** that the proceedings are **TERMINATED** without prejudice.

08/17/2014  
Date

  
John A. Duck, Jr.  
Immigration Judge