

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
DEPARTMENT OF JUSTICE
HOUSTON, TEXAS**

IN THE REMOVAL CASE OF)

CASE NO.:)

MOVANT)
_____))
_____)

APPLICATION: Request for Sua Sponte Motion to Reopen

FOR THE MOVANT:

Bruce A. Coane, Esq.
3D International Tower
1900 West Loop South, Suite 820
Houston, Texas 77027

FOR THE UNITED STATES:

Lisa Luis, Esq.
Assistant Chief Counsel, DHS
Houston, Texas

FINDINGS AND DECISION

Respondent is a native and citizen of the Philippines. An Order to Show Cause (herein, "OSC") was served on the respondent via certified mail on May 20, 1996. The Respondent was charged with deportability under § 241(a)(1)(B) of the Immigration and Nationality Act (herein, "Act" or "INA"), as a nonimmigrant who remained in the United States for a time longer than permitted. On July 22, 1996 the Court ordered Respondent deported to the Philippines *in absentia*. On May 8, 2002 the Court denied a Motion to Reopen which was filed on April 26, 2002 by the Respondent. Now pending before the Court is Respondent's Motion, requesting that the Court reopen her case sua sponte, filed on September 29, 2003. The Service has filed a response in opposition to the motion.

Respondent has failed to meet the requirements of § 240(b)(5)(C), as she has failed to timely file a motion to reopen within 180 days, nor has she demonstrated she did not receive a notice to appear. Furthermore, Respondent has already been denied one motion to reopen and pursuant to 8 C.F.R. § 3.23(b)(1) a party may only file one motion to reopen. The Court finds that Respondent's subsequent Motion to Reopen must fail. However, the Court will reopen Respondent's case on its own motion pursuant to 8 C.F.R. § 3.23(b).

Under 8 C.F.R. § 3.23(b), the Immigration Court has the sue sponte authority to reopen or reconsider any case in which it has rendered a decision as long as jurisdiction is not vested with the Board of Immigration Appeals. The Court finds it is in the interest of justice, due to the prior attorneys ineffectiveness, to reopen this case. Respondent has filed an affidavit containing information about her arrangement with prior counsel and his ineffectiveness. She has also filed a grievance form with the State Bar of Texas and sent a letter to her prior counsel. Respondent has a United States Citizen husband of seven years and a United States Citizen child. It appears she has the ability to adjust and would have previously adjusted but for the lack of efforts of her prior counsel.

Based on the forgoing the following shall be entered:

ORDER

IT IS HEREBY ORDERED Respondent's Motion to Reopen is **DENIED**.

IT IS HEREBY FURTHER ORDERED that Respondent's case be reopened under the Court's Sua Sponte authority.

11/13/03
Date


Immigration Judge