

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

IN RE: GABRIEL NICOLAZ CRUZ

File: A098 369 882 - Omaha, NE

December 21, 2011

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT:

Alison M. Brown, Esquire

ON BEHALF OF DHS:

Anastasia M. Senat
Assistant Chief Counsel

APPLICATION: Termination; remand

This case was last before the Board on May 29, 2009, when we remanded the record to the Immigration Judge to “prepare a new decision,” given that the name on the decision referred to a different alien, and the decision referred to forms of relief for which the respondent did not apply. On remand, the Immigration Judge amended his decision to correct the errors. The respondent has appealed. The Department of Homeland Security (“DHS”) has opposed the appeal. The record will be remanded once again to the Immigration Judge.

We review the findings of fact made by the Immigration Judge, including any determination of credibility, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met their burdens of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

On remand before the Immigration Judge, the respondent submitted a motion to reopen based on ineffective assistance of counsel, along with evidence of his compliance with *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). The Immigration Judge declined to adjudicate the motion, finding that consideration of the motion would exceed the scope of the remand. We disagree.

As a general rule, when we remand a case to an Immigration Judge, the remand is effective for the stated purpose and for consideration of other appropriate matters, unless the Board qualifies or limits the remand for a specific purpose. See *Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978). Although we remanded the matter for a specific purpose, the situation here is akin to that which we considered in *Matter of M-D-*, 24 I&N Dec. 138 (BIA 2007). In that case, we held that when a case is remanded for the specific and limited purpose of conducting background checks, the Immigration Judge reacquires jurisdiction over the proceedings and may consider additional evidence if it is material, was not previously available, and could not have been discovered or presented at the former hearing. *Id.* at 141-42, see also 8 C.F.R. §§ 1003.2(c)(1) and 1003.23(b)(3).

Thus, the Immigration Judge in the instant case reacquired jurisdiction over the proceedings on remand and had the authority to consider the respondent's motion to reopen. [FN1] Therefore, we will remand the record to the Immigration Judge to consider the new evidence presented by the respondent and to adjudicate the respondent's motion to reopen.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Ellen Liebowitz
FOR THE BOARD

FN1. Even though the respondent also submitted the motion to reopen to the Board while his first appeal was pending, our remand divested us of jurisdiction over the motion. *Matter of Patel*, *supra*, at 601.

2011 WL 6965220 (BIA)

END OF DOCUMENT