



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 20530

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Ann Arbor, MI 48104-0000**

**DHS/ICE Office of Chief Counsel - DET  
333 Mt. Elliott St., Rm. 204  
Detroit, MI 48207**

**Name: TADIC, MIROSLAV PETAR**

**A 035-946-280**

**Date of this notice: 11/6/2014**

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

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Grant, Edward R.

william  
User team: Docket

Falls Church, Virginia 20530

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File: A035 946 280 – Detroit, MI

Date: NOV - 6 2014

In re: MIROSLAV PETAR TADIC

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Laurence H. Margolis, Esquire

ON BEHALF OF DHS: Jonathan Goulding  
Assistant Chief Counsel

APPLICATION: Reopening, remand

ORDER:

The respondent requests that removal proceedings be reopened, that his removal order be set aside and that his status as a lawful permanent resident be restored. On August 29, 2013, the Immigration Judge denied the respondent's motion to reopen proceedings on the basis that the motion was number-barred, untimely and that it was barred as a result of the alien's deportation. However, review of the evidence reveals that the respondent's motion to set aside and vacate his plea of guilty for obtaining under false pretenses money or property in excess of \$20,000.00 in violation of MCL 750.2185A was granted by the Berrien County Trial Court on June 26, 2013, due to the respondent receiving ineffective assistance of counsel based on a violation of the standard articulated in *Padilla v. Kentucky*, 559 U.S. 356 (2010).

Consequently, the proffered evidence raises the question as to whether or not the respondent's conviction which served as the basis for his removal remains a conviction within the meaning of the immigration laws under current Sixth Circuit and Board precedent. See *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). Additional fact-finding to determine its effect on the proceeding is required. See *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). If the conviction underlying the order of removal has been vacated, the Immigration Judge should consider exercising his sua sponte authority to reopen and terminate these proceedings.

Accordingly, the case is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.

  
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FOR THE BOARD