



with the COMES NOW RESPONDENT, by and through his attorney of record, requesting that the Immigration Judge reconsider her decision denying the request to correct and start respondent's asylum clock.

On May 12, 2010, respondent, through counsel, filed his request to correct and start respondent's asylum clock. The basis for that request was that at the February 18, 2010 hearing, neither respondent, nor counsel, took any steps that would delay the adjudications of respondent's claim. On June 9, 2010, the undersigned counsel for respondent received a call from Kathy Cole, the Supervising Clerk for the Immigration Judges on the 17<sup>th</sup> Floor advising counsel that respondent's asylum clock had been stopped because respondent had not presented evidence of having his Biometrics taken. It was quickly pointed out that the first page of the package of documents filed at the February 18, 2010 hearing showed that respondent had complied with the requirements to have his Biometric taken. Ms. Cole advised that she would bring this matter to the Judge's attention and expect that a reply to the request would be issued shortly.

Thereafter, on June 10, 2010, counsel for respondent received the Immigration Judge's decision dated June 9, 2010 denying the request to correct and start respondent's asylum clock indicating that at the February 18, 2010 hearing, counsel for respondent had declined the first date offered by the Immigration Judge for a merits hearing.

It is requested that the Immigration Judge reconsider her decision in light of the following facts:

1. As counsel for respondent at the February 18, 2010 hearing, I do not recall explicitly waiving an earlier date offered by the court;
2. I do recall that at the February 18, 2010 hearing, the court went to great effort to ensure that the merits hearing was scheduled for a date prior to 180 days elapsing on respondent's asylum clock.

Since receiving the Court's decision denying the request to correct and start respondent's asylum clock, as counsel for respondent I have diligently attempted to schedule an appointment

with the Immigration Court so that I could listen to the tape recording of court proceedings on February 18, 2010. However, I was informed by the Immigration Judge's clerk this morning that there are no appointments available to listen to the tape record prior to the merits hearing scheduled for Thursday, June 24, 2010.

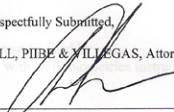
Based upon the foregoing, it is requested that the court reconsider its decision denying respondent's request to correct and start his asylum clock. Given that counsel does not recall explicitly declining an earlier merits date, coupled with the courts efforts to schedule the merits hearing prior to the expiration of 180 days, it is asserted that there is sufficient ambiguity in the record that the *rule of lenity* dictates erring on the side of caution and allowing respondent's asylum clock to run as of the last hearing<sup>1</sup>.

I declare that the representations made above are true and correct to the best of my knowledge and believe under penalty of perjury under the laws of the United States.

Respectfully Submitted,

HILL, PIIBE & YILLEGAS, Attorneys at Law

Date: 6/21/2010

  
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<sup>1</sup> To the extent that any ambiguity lingers, we note that there is a "longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987) (principle is a corollary to the rule of lenity that applies in construing criminal statutes); see also *INS v. St. Cyr*, 533 U.S. 289, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001);