

DETAINED

[REDACTED]

[REDACTED]

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

[REDACTED]

In the Matter of:	*	In Removal Proceedings
	*	
	*	DETAINED DOCKET
	*	
	*	Next Hearing: [REDACTED] 2016
	*	
	*	Immigration Judge: [REDACTED]

[REDACTED] **Merits Hearing:** [REDACTED] **2016** [REDACTED]

RESPONDENT'S MOTION TO RECONSIDER

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

[REDACTED]

In the Matter of:

[REDACTED]

[REDACTED]

* **In Removal Proceedings**
*
* **DETAINED DOCKET**
*
* **Next Hearing: [REDACTED] 2016**
*
* **Immigration Judge: [REDACTED]**

RESPONDENT’S MOTION TO RECONSIDER

INTRODUCTION

Pursuant to section 240(c)(6) of the Immigration and Nationality Act (“INA”), Respondent, [REDACTED], by and through undersigned counsels, [REDACTED], and the [REDACTED], and [REDACTED], and [REDACTED], hereby respectfully seeks reconsideration of the Court’s [REDACTED] 2016 decision denying the Respondent’s claim to U.S. citizenship by derivation pursuant to Section 320 of the INA as amended by the Child Citizenship Act of 2000 (“CCA”).

STATEMENT OF FACTS AND STATEMENT OF THE CASE

The Respondent was born to [REDACTED] (“father”), a U.S. Citizen, and [REDACTED], a Nigerian citizen, on [REDACTED] 1991 in [REDACTED] Nigeria. (See Exh. A, Affidavit of Respondent’s Father). After the Respondent was born, his mother left him in the care of his maternal grandmother, [REDACTED] (“grandmother”). (See Exh. A, Affidavit of Respondent’s Father and Exh. B, Affidavit of Respondent’s Grandmother) The Respondent traveled to the United States with his grandmother on [REDACTED] 1998 at the age of six to live with his father. (See Notice to Appear “NTA,” [REDACTED] 2015). The Respondent’s father was sent to prison in [REDACTED] 1998 to serve a lengthy sentence. (See Exh. A, Affidavit of Respondent’s Father and Exh. B, Affidavit of Respondent’s Grandmother). Even though he was jailed, his father paid (via

his girlfriend, [REDACTED] the rent of the home where the Respondent and his grandmother lived and remained involved in the Respondent's daily life through weekly phone calls. (*See Id.*) The Respondent also visited his father in jail on a monthly or every-other-month basis. (*See Id.*) These visits allowed for physical contact and lasted many hours. (*See Id.*) The father continued to help pay the rent as the grandmother worked low-wage hourly jobs and would have been unable to pay the rent on her own. (*See Exhibit B, Affidavit of Respondent's Grandmother*).

In its [REDACTED] 2016 decision, the Court found the Respondent had not derived U.S. citizenship by derivation pursuant to the CCA. *See IJ Removability Decision*, at 13-14 (Feb. 2, 2016). The Court based its decision primarily on the Respondent's father's lack of physical custody over the Respondent. *Id.* at 14. The Court subsequently found the Respondent removable pursuant to INA § 237(a)(2)(A)(iii), as having been convicted of an aggravated felony as defined in INA § 101(a)(43)(F), to wit: a "crime of violence." *Id.* at 15, 18 (Feb. 2, 2016). The Respondent now files this motion to reconsider so that the Court can consider the full U.S. citizenship derivation argument.

STANDARD FOR RECONSIDERATION

A motion to reconsider shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority. INA § 240(c)(6)(C); 8 C.F.R. § 1003.3(b)(1). In general, a respondent may file one motion to reconsider within 30 days of the date of a final removal order. INA § 240(c)(6)(A)&(B), 8 C.F.R. § 1003.2(b)(2). The Court issued its decision in Respondent's case on [REDACTED] 2016, which was postmarked [REDACTED] 2016. This motion is timely filed within 30 days of the date of that decision.¹

ARGUMENT

I. AS A MATTER OF FACT, THE COURT ERRED IN OVERLOOKING THE VISITATION AS SUFFICIENT PHYSICAL CUSTODY ARGUMENT FOR PURPOSES OF THE CHILD CITIZENSHIP ACT OF 2000.

A child born outside of the United States automatically derives United States citizenship when all of the following conditions have been fulfilled: (1) At least one parent of the child is a citizen of the United States; (2) The child is under the age of eighteen years; and (3) The child is residing in the United States in

¹ Respondent notes for the record that although the Court's decision is dated as of [REDACTED] 2016, it appears to not have been mailed out until [REDACTED] 2016 and was not received by undersigned counsel until [REDACTED] 2016.

the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence. INA § 320, 8 U.S.C. § 1431.

The Respondent's response brief to the DHS opposition dated [REDACTED] 2015 proffered an argument that the Court did not consider in its [REDACTED] 2016 decision. While the Court explored the joint custody argument, the Court did not consider the argument that the unique circumstances in this case, which include the provision of a home and the frequent day-long, contact visitations, amount to a form of limited physical custody known as visitation. *See Beckman v. Boggs*, 337 Md. 688, 703 n.7, ("Visitation, which is considered to be a form of temporary custody, and custody determinations are generally governed by the same principles.").

The "care, custody, and control" Respondent's father displayed while incarcerated was no doubt limited given his confinement—but certainly not eliminated—and that limitation factually renders the interaction over the years as visitation. In the case of *Koshko v. Haining*, 921 A.2d 171 (Md. 2007), the Maryland Court of Special Appeals reviewed a visitation agreement that the trial court entered on behalf of the child's grandparents. That agreement established "a rolling schedule of four-hour visits every 45 days and quarterly overnight visits." *Id.* at 174. Despite this limited contact between the child and the grandparents in *Koshko*, the Maryland Court of Special Appeals nonetheless viewed this limited contact as visitation, a form of limited custody that required review given the parent's objection to those rights. *Id.* While Respondent's father did not have overnight visits with the Respondent, they did meet on a monthly or bi-monthly basis for contacts visits lasting many hours which over the years amounted to more supervision and control than the grandparents in *Koshko*.

Visitation is therefore a form of custody that suffices for U.S. derivation purposes pursuant to the language and the congressional intent of the CCA, which sought to broaden the eligibility scope of derivative citizens thereby protecting those like the Respondent. The Respondent has submitted evidence meeting the preponderance of the evidence standard required for his claim for U.S. citizenship met his *See Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969).

CONCLUSION

For the foregoing reasons, this Court should reconsider its finding that the Respondent did not derive U.S. citizenship pursuant to the CCA.

Dated: [REDACTED] 2016

Respectfully submitted,

[REDACTED]

[REDACTED]

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

[REDACTED]

IN THE MATTER OF: * **IN REMOVAL PROCEEDINGS**
*
[REDACTED]. * **DETAINED DOCKET**
Respondent, *
* **Next Hearing Date:** [REDACTED] **2016**
*
File No. [REDACTED] * **Immigration Judge** [REDACTED]

ORDER OF THE IMMIGRATION JUDGE

Having read and considered **RESPONDENT'S MOTION TO RECONSIDER** in the above captioned matter, and any response thereto, it is **HEREBY ORDERED**, that the Motion be:

_____ **GRANTED** _____ **DENIED** because:

- _____ DHS does not oppose the motion
- _____ A response to the motion has not been filed with the court
- _____ Good cause has been established for the motion
- _____ The court agrees with the reasons stated in the opposition to the motion
- _____ The motion is untimely per _____
- _____ Other: _____
- _____
- _____
- _____

Date _____ [REDACTED]

CERTIFICATE OF SERVICE

This document was served by: { } Mail [M] { } Personal Service [P]
To: { } Alien { } Alien c/o Custodial Officer { } Alien's Atty/Rep. { } DHS
Date: _____ By: Court Staff: _____

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[REDACTED]

PROOF OF SERVICE

On [REDACTED] 2016 _____, I, [REDACTED] _____
served or caused to be serve a copy of _____ RESPONDENT'S MOTION TO RECONSIDER _____
and any attached pages to the _____ Office of ICE Chief Counsel _____
at the following address _____ [REDACTED] _____
by _____ hand-delivery. _____

[REDACTED]

Date