

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA



In the Matter of:)
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Rrustem, Neza, *et al.*)
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Respondents)
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A79-091-766

A79-091-797

A79-091-768

IN ASYLUM ONLY PROCEEDINGS

DEPARTMENT OF HOMELAND SECURITY'S OPPOSITION
TO RESPONDENTS' AMENDED MOTION TO REOPEN

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COMES NOW the Department of Homeland Security (“DHS”), by and through undersigned counsel, and requests that the Board of Immigration Appeals (“Board”) deny the Respondents’ motion to reopen.

1. The DHS filed a response to Respondents’ motion to reopen on September 24th, 2007. Subsequent to that response, on October 12th, 2007, Respondents’ attorney filed a motion styled *Amended Motion for Stay of Removal and Motion to Remand for Consideration of New Evidence*. The DHS remains opposed to reopening Respondents’ case for the reasons stated in the September 24th response.
2. Additionally, the DHS notes that the attached news stories do not constitute evidence that is “material” as contemplated by 8 C.F.R. § 1003.2(c)(3)(ii). The news articles originate from the United States. Any interest in Albania about Respondents’ case is a direct result of Respondents’ attorney’s own webpage and attempt to publicize the case in the US and in Albania. Furthermore, the news articles pertain to Respondents’ removal from the US and his refusal to comply with ICE officers at the time of his scheduled removal. It is noted that “[t]he ultimate decision in an administrative process cannot itself constitute ‘new’ evidence to justify reopening. If an adverse decision were sufficient, there could never be finality in the process.” *See INS v. Doherty*, 502 U.S. 314, 325 (1992) (*quoting* Attorney General App. to Pet. for Cert. 67a).
3. Also, attached to the amended motion (Exhibit 5), Respondents’ prior attorney recognizes that “inconsistent and incredible” testimony was presented to the immigration judge. It is pointed out that Respondents’ prior counsel zealously represented Respondent before the immigration court, on appeal, and in a motion to reconsider. However, there were no grounds to reverse the adverse credibility finding made by the immigration judge and the

Board stated, in its November 25th, 2003 response to counsel's motion to reconsider, they had "already independently reviewed the respondent's claims in arriving at our decision dated August 27th, 2003".

4. Moreover, the letter from Respondents' former counsel demonstrates that the Respondents' attempts to reopen this case based on alleged ineffective assistance of prior counsel are plainly without merit, as the Respondents' former counsel zealously represented him.
5. The DHS again emphasizes that the regulations "plainly disfavor" motions to reopen. *INS v. Abudu*, 485 U.S. 94, 110 (1988). The Supreme Court has noted that the granting of a motion to reopen is discretionary and that the Attorney General has "broad discretion" to grant or deny such motions. *Doherty, supra*, at 321 (1992). Further, a party seeking reopening bears a "heavy burden." *INS v. Abudu, supra*, at 110. In this regard, the Court has stated: "Motions for reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing, and motions for a new trial on the basis of newly discovered evidence. This is especially true in a deportation proceeding where, as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States." *See Doherty, supra*, at 323-4. In this case the Respondents' are attempting to delay their removal by filing multiple motions to reopen and creating media publicity both here and in Albania. Nothing changes the fact that Respondents had a full hearing before an immigration judge on their applications; were found not credible based on numerous inconsistencies,

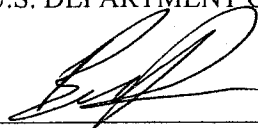
both internally in testimony and with the documentary evidence; and the decision was reviewed and affirmed by this Board both in appeal and in a motion to reconsider.

ACCORDINGLY, the DHS moves the BIA to deny the Respondents' pending motion to reopen.

Respectfully submitted,

U.S. DEPARTMENT OF HOMELAND SECURITY

by:



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Dated: October 30, 2007

CERTIFICATE OF SERVICE

Alien Name: Neza Rrustem
Alien Number: A79-091-766

On the 30th day of October, 2007, I, Benjamin Rosen, mailed a copy of the Department's response to Respondent's counsel at the following address:

John Wheat Gibson, Esq.
701 Commerce, Suite 110
Dallas, TX 75202



Benjamin D. Rosen
Assistant Chief Counsel

10/30/07

(Date)