U.S. Department of Justice

Executive Office for Immigration Review

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Name: RODRIGUEZ-ENAMORADO, CA... **A 209-338-632**

Date of this notice: 7/1/2019

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:
Donovan, Teresa L.
Cole, Patricia A.
Greer, Anne J.

Userteam: Docket

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File: A209-338-632 – San Antonio, TX Date: JUL 01 2019

In re: Carin Idiana RODRIGUEZ-ENAMORADO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark Kinzler, Esquire

ON BEHALF OF DHS: Todd Keller
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's November 14, 2018, decision. In that decision, the Immigration Judge denied the respondent's motion to reopen her June 25, 2018, in absentia removal order. The Department of Homeland Security ("DHS") opposes the appeal. The respondent's request for oral argument is denied. The respondent's appeal will be sustained and the record will be remanded.

This Board defers to the Immigration Judge's factual findings, including credibility findings, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that the Immigration Judge erred in denying her motion. Specifically, the respondent contends that the Immigration Judge erred in determining that she received proper notice even though the Notice of Hearing ("NOH") was mailed to an incorrect address. The respondent also argues that the Immigration Judge erred in determining that sua sponte reopening was not warranted in this case.

We disagree with the Immigration Judge's decision denying the respondent's motion. The record reveals that the respondent was personally served with a Notice to Appear ("NTA") on August 30, 2017, which contained her current address and advised her of the obligation to provide a valid mailing address, to inform the Court of any changes to her address, and the consequences of her failure to appear (IJ at 3; Exh. 1). However, the street numbers of the respondent's address were transposed and thus the address on the NTA was incorrect. The respondent, who is illiterate, did not recognize this error and never received the NOH listing the time and place of her hearing, which was returned to the immigration court as undeliverable. The Immigration Judge determined that the respondent was not entitled to actual notice pursuant to *Mauricio-Benitez v. Sessions*, 908 F.3d 144 (5th Cir. 2018), which held that an alien's failure to receive notice of the removal hearing, which was due to his failure to correct an error in his mailing address, was not a ground to reopen. However, the facts in this case are distinguishable, including that the NOH was returned as undeliverable. *See Mauricio-Benitez v. Sessions*, 908 F.3d at 150. We will therefore remand the record to allow the respondent another opportunity to appear for a hearing to contest the charge

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of removability, and, in the event the DHS is able to meet its burden on the removal charge in the remanded proceedings, to apply for any form of relief for which she may be eligible. Since we conclude that remand of the record is warranted based on the aforementioned reasons, we need not address whether she warrants sua sponte reopening.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained, and the Immigration Judge's November 14, 2018, decision is vacated.

FURTHER 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.

Teresa L. Dawson

FOR THE BOARD

Board Member Patricia A. Cole respectfully dissents. I agree with the Immigration Judge's decision denying the respondent's motion. The record reveals that the respondent was personally served with an NTA on August 30, 2017, which indicated a current address for her and advised her of the obligation to provide a valid mailing address, to inform the Court of any changes to her address, and the consequences of her failure to appear (IJ at 3; Exh. 1). Even if the subsequently served NOH was sent to an incorrect address, I agree with the Immigration Judge's determination that the respondent failed to comply with her address obligations by correcting the address error on the NTA and thus she was not entitled to actual notice (IJ at 2-3). *See* section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229(b)(5)(B); *see also Mauricio-Benitez v. Sessions*, 908 F.3d 144 (5th Cir. 2018) (holding that an alien's failure to receive notice of the removal hearing, which was due to his failure to correct an error in his mailing address, was not a ground to reopen); *Garcia v. Barr*, 2019 WL 164311 (5th Cir. 2019) (holding that regardless of how the error in the alien's address on the NTA was introduced, the alien was obligated to correct the error for purposes of receiving notice).

The majority's attempt to distinguish *Mauricio-Benitez v. Sessions*, 908 F.3d 144, fails. Unlike the alien in that case, here the respondent did have a reasonable way to discover that the address listed on the NTA was not accurate due to her illiteracy. The respondent signed the NTA indicating that she was provided oral notice in Spanish of the contents of the NTA, and thus she has not established that she was not orally informed of the incorrect address listed on the NTA. The respondent argues on appeal that her case is distinguishable because she exercised due diligence in filing her motion to reopen. However, the alien's motion in *Mauricio-Benitez v. Sessions*, 908 F.3d 144, was not denied for lack of due diligence.

The respondent also argues on appeal that the Immigration Judge failed to consider whether she rebutted the presumption of delivery. However, the Immigration Judge was not required to consider whether the presumption of delivery was rebutted because he properly determined that the respondent was not entitled to actual notice.

Cite as: Carin Idiana Rodriguez-Enamorado, A209 338 632 (BIA July 1, 2019)

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