U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

DHS/ICE Office of Chief Counsel - NYC
26 Federal Plaza, Room 1130
New York, NY 10278

Name: SINCHE-VERA,BRAULIO ALADINO **A097-957-323**

Date of this notice: 3/20/2012

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:
Adkins-Blanch, Charles K.
Guendelsberger, John
Manuel, Elise L.

File: A097 957 323 - New York, NY

Date: MAR 20 2012

In re: BRAULIO ALADINO SINCHE-VERA

IN REMOVAL PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

ORDER:

The Immigration Judge issued a decision on March 4, 2010, terminating proceedings and certifying his decision to the Board.[1]

Under 8 C.F.R. § 1003.1(d)(3) (2011), we defer to an Immigration Judge's factual findings unless they are clearly erroneous, but we retain independent judgment and discretion, subject to applicable governing standards, regarding pure questions of law and the application of a particular standard of law to those facts. *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

The record reflects that the respondent was served personally with a Notice to Appear on March 30, 2006. The Notice to Appear ordered the respondent to appear at the New York Immigration Court on April 26, 2006. However, the Notice to Appear was not filed with the Immigration Court until June 22, 2007. Counsel for the government informed the Immigration Judge that the respondent did appear for the hearing on April 26, 2006, but it was determined to be a failure to prosecute because the government had not yet filed the Notice to Appear with the Immigration Court (Tr. at 2). The New York Immigration Court subsequently sent numerous notices of hearing by regular mail to the respondent, including the last hearing notice to the respondent at a new address provided by the Department of Homeland Security. The respondent did not appear for any of the hearings after the initial hearing on April 26, 2006.

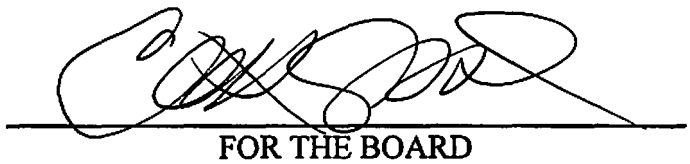
The Immigration Judge terminated removal proceedings after determining that the evidence did not sufficiently show that the respondent had actual or constructive receipt of the notice of hearing.

[1] We note that this case became part of the 'Decision and Order of the Immigration Judge in 20 In Absentia Cases.' *See* I..J. Dec. dated March 4, 2010. The Immigration Judge certified his decision to the Board.

He indicated that while the use of regular mail for service of the Notice to Appear and the notice of hearing is permitted pursuant to Section 239(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a), the requirement of "clear, unequivocal and convincing" evidence in Section 240(b)(5)(A), 8 U.S.C. § 1229a(b)(5)(A), means that at a minimum, there must be proof that the notice reached the address. The Immigration Judge found that while regular mail is clearly sufficient notice when the respondent appears, it is never sufficient notice to meet this high standard to remove a person who does not appear.

We will affirm the Immigration Judge's decision terminating proceedings without prejudice. The record reflects that the respondent appeared for his first hearing on April 26, 2006, as instructed on the Notice to Appear. However, the Notice to Appear was not filed with the New York Immigration Court until June 22, 2007. Therefore, if the respondent attempted to file a change of address form with the Immigration Court between April 2006 and June 2007, it could not have been accepted and filed by the Immigration Court because the Notice to Appear was not received from the Department of Homeland Security until June 22, 2007. Therefore, it is unknown if the respondent's address on the hearing notices was indeed the most recent address provided by him. Consequently, we will affirm the Immigration Judge's decision terminating proceedings without prejudice. Therefore, we find it unnecessary to address the remaining issues discussed by the Immigration Judge in his decision.

Based on all of the evidence in the record, we affirm the Immigration Judge's decision terminating the proceedings in this matter.



FOR THE BOARD