U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: PATEL, SEEMA

A 098-940-008

Date of this notice: 7/15/2019

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:
Liebowitz, Ellen C
Baird, Michael P.
Creppy, Michael J.

Userteam: Docket

File: A098-940-008 – Miami, FL

Date: JUL 15 2019

In re: Seema PATEL

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Margaret W. Wong, Esquire

APPLICATION: Reopening; remand

The respondent, a native and citizen of India, has filed a motion to reopen her proceedings. She seeks rescission of an in absentia removal order entered against her after her failure to appear for a hearing on October 4, 2005. The Department of Homeland Security ("DHS") has not filed a response. The motion will be granted, and the record will be remanded.

The respondent was personally served with a Notice to Appear ("NTA") on May 18, 2005, which informed her that she would need to appear before an Immigration Judge at the Krome Processing Center (Exh. 1). On or about May 31, 2005, the DHS filed a Notice to EOIR: Alien Address (Form I-830) with the Krome Immigration Court, reporting that the respondent's address was 90149 Wall Street, Apt. 4G, North Bergen, NJ 07047. On June 1, 2005, a notice was sent to the respondent at the Wall Street address advising her to appear for a hearing at the Miami Immigration Court on October 4, 2005. The respondent, however, did not appear at her hearing, and the Immigration Judge ordered her removed in absentia.[1]

On October 29, 2013, the respondent, through a prior counsel, filed a motion to reopen and rescind the in absentia order, claiming lack of notice of her hearing. The respondent confirmed that she had provided the Wall Street address, which belonged to her brother at the time, and argued that she nonetheless did not receive the hearing notice. On December 18, 2013, an Immigration Judge denied the motion because the respondent did not meet her burden of rebutting the presumption of delivery of the notice of hearing based on the factors set forth in *Matter of M-R-A-*, 24 I&N Dec. 665, 674 (BIA 2008). In a decision dated September 2, 2015, we upheld the Immigration Judge's decision and dismissed the respondent's appeal.

On October 15, 2018, the respondent, through new counsel, filed the instant motion to reopen seeking to rescind the October 4, 2005, in absentia order. In an affidavit, the respondent asserts that she now realizes that the hearing notice and in absentia order were not sent to the correct address; her brother's address had been *9019* Wall Street, rather than *90149* Wall Street. She acknowledges the inconsistency in her prior statement and explains that she incorrectly assumed that the *90149* Wall Street was correct without verifying it with her brother. It had only become known to her that the 90149 Wall Street address was incorrect after her current counsel tried to search the address.

[1] We note that neither the hearing notice nor the removal order were returned to sender.

In support of her motion, the respondent provides an affidavit from her brother and sister-in-law confirming that the correct street address was 9019 Wall Street. The affidavit is accompanied by portions of 1040 Forms from 2003 and 2004, a provisional driver's license issued to the respondent's sister-in-law on December 10, 2003, with an expiration date of December 31, 2007, and an August 23, 2003, notice sent by the U.S. Citizenship & Immigration Services ("USCIS") to the respondent's sister-in-law regarding her permanent resident card – all of which reflect an address of 9019 Wall Street.

Upon consideration of the totality of the respondent's evidence, we conclude that the respondent has rebutted the presumption of proper delivery of her hearing notice.[2] *See Matter of M-R-A-*, 24 I&N Dec. at 674 (setting forth the standards for determining whether an alien has presented sufficient evidence to overcome the weaker presumption of delivery that attaches to notices sent by regular mail). Overall, the respondent presented strong evidence that the notice was mailed to the incorrect address. The notice was therefore not properly served on the respondent. *See, e.g., Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001) (holding that an in absentia order of removal is inappropriate where the record reflects that the alien did not receive, or could not be charged with receiving, the Notice to Appear that was served by mail to an old address). The respondent has presented evidence that her brother had in fact given the correct address to the DHS, but that it was erroneously transcribed.

In light of the foregoing, we will remand the record to the Immigration Judge for further proceedings regarding the respondent's removability and eligibility for relief from removal.

Accordingly, the following orders will be entered.

ORDER: The motion to reopen and rescind the in absentia order of removal is granted.

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.

Ellen Rue bowitz

FOR THE BOARD

[2] We also consider that the DHS has not filed a response to the motion, and it is therefore considered unopposed. *See* 8 C.F.R. § 1003.2(g)(3).