



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MEZA-NAVARRO, CARLOS ROB... A 088-352-182

Date of this notice: 8/22/2018

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:
Mann, Ana
Kelly, Edward F.
Snow, Thomas G

Sr. Clerk
User team: Docket

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NY

Falls Church, Virginia 22041

File: A088 352 182 – Miami, FL

Date: **AUG 22 2018**

In re: Carlos Roberto MEZA-NAVARRO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Paul W. Shonk, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, has appealed the Immigration Judge's decision, dated February 26, 2018, which denied his motion to reopen removal proceedings held in absentia. The appeal will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argued that he was not provided notice of the hearing held on January 10, 2011 (Respondent's Br. at 4-9). He claimed the attorney, Juan Gonzalez, who appeared on his behalf, was not his authorized attorney (Respondent's Br. at 2). The respondent further averred that he has never spoken to the attorney, and he never consented to representation from Mr. Gonzalez (Respondent's Br. at 9).

The respondent had appeared in Immigration Court several times previously, apparently with former counsel, Francisco Fernandez, and a new hearing on an asylum application was set for August 4, 2010. At that time, a motion to continue was filed by a new attorney, Mr. Gonzalez, but the record does not contain a Notice of Entry of Appearance as Attorney (Form EOIR-27) by this attorney or any other. The motion to continue was granted, and the respondent did not appear at the continued hearing, although Mr. Gonzalez was present.

The Immigration Judge denied the respondent's motion, in significant part, because notice was provided to the respondent's attorney of record, Mr. Gonzalez. *See Matter of Barocio*, 19 I&N Dec. 255, 256-59 (BIA 1985). As the record does not contain a Form EOIR-28, filed by Mr. Gonzalez, the respondent cannot be properly charged with receiving notice of the time, date, and place of the removal hearing wherein he was ordered removed in absentia in accordance with section 239(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(2)(A). *See* 8 C.F.R. § 1292.4(a). Under these circumstances, we cannot find that notice of hearing to counsel constituted notice to the respondent. *See* 8 C.F.R. § 1292.5(a); *Matter of Barocio*, 19 I&N Dec. at 256-59 (holding that notice to an alien's counsel, who was authorized to represent him at the time, constitutes notice to the alien).

In light of these circumstances, we will reopen proceedings and remand to allow the respondent another opportunity to appear for a removal hearing. Accordingly, the following orders shall be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The in absentia removal order is rescinded.

FURTHER ORDER: The proceedings are reopened.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and entry of a new decision.



FOR THE BOARD