



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: OROZCO-DE LA PAZ, ALEJAND... A 201-179-368

Date of this notice: 9/19/2019

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:
Mann, Ana
Kelly, Edward F.
Mullane, Hugh G.

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A201-179-368 – Orlando, FL

Date: SEP 19 2019

In re: Alejandrina OROZCO-DE LA PAZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Caridad S. Torres, Esquire

APPLICATION: Reopening

The respondent has appealed from the Immigration Judge's decision denying her motion to reopen proceedings.¹ The respondent was ordered removed in absentia after she did not appear for a scheduled hearing on November 6, 2013. The respondent contests receiving proper notice of her hearing. The respondent's appeal will be sustained the record will be remanded for further proceedings.

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).

After consideration of the totality of the circumstances presented, we are persuaded that the respondent met her burden to establish that she did not receive proper notice of her hearing and that proceedings should therefore be reopened pursuant to section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(ii). The record reflects that hearing notices and the November 6, 2013, removal decision were returned to the Immigration Court as undeliverable. The respondent maintains that her apartment number had been wrongly recorded as "Apt. L72" and that she resided in "Apt. L78." *See* Respondent's Motion to Reopen, Tab G. In support of her motion to reopen, the respondent submitted evidence that she regularly reported to Department of Homeland Security (DHS) officers during the period before and after the scheduled hearing. *See* Respondent's Motion to Reopen, Tab D. The record reflects that in 2014 the DHS submitted a Form I-830, Notice to EOIR: Alien Address, to the Immigration Court which indicated that the respondent had reported her address as "Apt. L78." The respondent concurrently submitted a change of address form to the Immigration Court that referenced her "old address" of "Apt. L72" and provided her current address as "Apt. L78." The Immigration Judge considered this change of address form, but concluded that the respondent had not met her burden to show that she had not previously lived at "Apt. L72" when service of her hearing notice was attempted. However, on appeal the respondent has submitted evidence from a United States Postal Service

¹ The Immigration Judge entered the decision on February 22, 2018, but it was not served on the parties. The Immigration Judge therefore reissued the decision on March 26, 2018.

Manager indicating that “Apt. L72” does not exist at the address in question.² After considering the totality of the circumstances presented, we are persuaded that the respondent has established that she did not receive proper notice of the hearing at which she was ordered removed and that proceedings should therefore be reopened pursuant to section 240(b)(5)(C)(ii) of the Act. Accordingly, the following order will be entered.

ORDER: The respondent’s appeal is sustained and the record is remanded for further proceedings.



FOR THE BOARD

Board Member Hugh G. Mullane respectfully dissents without opinion.

² We have taken administrative notice of this evidence as an official record. See 8 C.F.R. §§ 1003.1(d)(3)(iv), 1287.6(a).