



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

**Marton, Robert Charles
The Law Alliance APC
175 South Lake Avenue, Suite 210
Pasadena, CA 91101**

**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: PFLUGLER, CHRISTIAN

A 095-721-949

Date of this notice: 3/31/2016

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:
O'Leary, Brian M.
Guendelsberger, John
Grant, Edward R.

Userteam: Docket

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Falls Church, Virginia 22041

File: A095 721 949 – Los Angeles, CA

Date:

MAR 31 2016

In re: CHRISTIAN RUDOLF PFLUGLER

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert C. Marton, Esquire

APPLICATION: Reopening

The respondent, a citizen and native of Germany, has appealed the Immigration Judge's September 23, 2014, decision denying the respondent's motion to reopen his removal proceedings held in absentia by an Immigration Judge on June 25, 2014. The Department of Homeland Security (DHS) has not filed a reply to the appeal. The appeal will be sustained.

Upon de novo review, in light of the totality of circumstances presented in this case, including the respondent's diligence in filing a motion to reopen, and the absence of DHS filing an opposition to reopening, we will sustain the appeal and allow the respondent another opportunity to appear for a hearing. *See Matter of W-F-*, 21 I&N Dec. 503, 509 (BIA 1996) (stating that whether exceptional circumstances exist to excuse an alien's failure to appear, the "totality of circumstances" pertaining to the alien's case must be considered).

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the in absentia order is vacated, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
606 SOUTH OLIVE ST.
LOS ANGELES, CA 90014

ROBERT MARTON, ESQ.
175 SOUTH LAKE AVE., STE. 210
PASADENA, CA 91101

IN THE MATTER OF
PFLUGLER, CHRISTIAN

FILE A 095-721-949

DATE: Sep 24, 2014

UNABLE TO FORWARD - NO ADDRESS PROVIDED

ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:
BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 20530

ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
606 SOUTH OLIVE ST.
LOS ANGELES, CA 90014

X OTHER: See attached order.
M. Moner
COURT CLERK
IMMIGRATION COURT

CC: PIEPMEIER, KRISTIN, ESQ.
606 S. OLIVE STREET, 8TH FLOOR
LOS ANGELES, CA, 900140000

FF

Immigrant & Refugee Appellate Center, LLC | www.irac.net

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA)
(2009) – *present without admission or parole*

APPLICATIONS: Motion to Reopen; Motion for a Stay of Removal

ON BEHALF OF RESPONDENT:

Robert Marton, Esquire
175 South Lake Avenue, Suite 210
Pasadena, California 91101

ON BEHALF OF THE DEPARTMENT:

**Kristin Piepmeier, Assistant Chief Counsel
U.S. Department of Homeland Security
606 South Olive Street, Eighth Floor
Los Angeles, California 90014**

DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

Christian Pflugler (Respondent) is a native and citizen of Germany. See Exh. 1. On May 13, 2009, the U.S. Department of Homeland Security (Department) personally served Respondent with a Notice to Appear (NTA), alleging therein that he arrived in the United States at or near Blaine, Washington, on or about May 13, 2009, and was not then admitted or paroled after inspection by an immigration officer. See id. Accordingly, the Department charged Respondent with inadmissibility pursuant to INA § 212(a)(6)(A)(i). Id. Jurisdiction vested and removal proceedings commenced when the Department filed the NTA with this Court on May 20, 2009. See 8 C.F.R. § 1003.14(a).

On January 11, 2013, Respondent appeared in court and was personally served a Notice of Hearing (NOH), informing him of his next scheduled hearing on August 23, 2011. On August 13, 2013, at his counsel's request for a continuance, the Court served Respondent through regular mail with a NOH, informing him of his rescheduled hearing on June 25, 2014.

On June 25, 2014, Respondent failed to appear for his scheduled hearing. The Court, proceeding *in absentia*, found that inadmissibility had been established by clear, convincing, and unequivocal evidence based on the Department's documentary submissions. See Exh. 1. Accordingly, the Court ordered Respondent removed to Germany.

On July 29, 2014, Respondent filed the pending motion to reopen, claiming that he did not attend his June 25, 2014 hearing due to exceptional circumstances. See Resp't Mot. Namely, Respondent claims that he missed his flight to his home in Santa Barbara, California, and thus, his hearing, because his connecting flight was delayed. See id.

For the following reasons, this Court will deny Respondent's motion to reopen.

II. Law and Analysis

The Court may rescind an *in absentia* order of removal upon a motion filed within 180 days of the date of the order if the respondent demonstrates that he failed to appear because of exceptional circumstances beyond his control. 8 C.F.R. § 1003.23(b)(4)(ii). Exceptional circumstances include the serious illness of the respondent or the serious illness or death of the respondent's spouse, child, or parent. INA § 240(e)(1). Exceptional circumstances do not include less compelling circumstances. Id. The respondent bears the burden of supporting the motion with specific, detailed evidence to corroborate the claim of exceptional circumstances. Celis-Castellano v. Ashcroft, 298 F.3d 888, 890 (9th Cir. 2002); Matter of Beckford, 22 I&N Dec. 1216, 1218 (BIA 2000) (citing Matter of J-J-, 21 I&N Dec. 976, 984-85 (BIA 1997)).

In determining whether a respondent's absence was due to "exceptional circumstances," the Court must look at the "totality of the circumstances." Singh v. INS, 295 F.3d 1037, 1040 (9th Cir. 2002); Matter of W-F-, 21 I&N Dec. 503, 509 (BIA 1996); Matter of Shaar, 21 I&N Dec. 541, 550 (BIA 1996). The probability of the respondent obtaining relief as well as any lack of due diligence on the part of the alien in filing a motion to reopen are also relevant considerations in deciding whether exceptional circumstances exist. See Valencia-Fragoso v. INS, 321 F.3d 1204, 1206 (9th Cir. 2003) (finding no showing of exceptional circumstance where only possibility of relief was discretionary grant of voluntary departure); Sharma v. INS, 89 F.3d 545, 547 (9th Cir. 1996) (finding no exceptional circumstances where the respondent's only avenue of relief was a discretionary grant of asylum); cf. Singh, 295 F.3d at 1039 (finding reopening appropriate where the respondent had relief through an approved visa petition).

Here, Respondent claims that "air travel difficulties" constitute exceptional circumstances. See Resp't Mot. Further, he contends that he accounted for travel uncertainties, such as weather and timing, in scheduling his flight for June 24, 2014. See id.

The Court finds that Respondent's reason for not attending his scheduled hearing does not constitute an exceptional circumstance. To begin, typical daily occurrences that may cause mishaps, delays, and oversight do not constitute exceptional circumstances. See Valencia-Fragoso, 321 F.3d at 1205 (finding no exceptional circumstances where Respondent lost the hearing notice and had forgotten the scheduled time, causing her to arrive late). Respondent's claim that his is not a situation involving a typical daily occurrence is unconvincing. See Resp't Mot. The Court notes that, while unfortunate, scores of flights are delayed daily for various reasons, which may or may not involve inclement weather. Thus, Respondent has not demonstrated how his situation differs from that of someone who is late for his hearing due to the typical daily occurrence of, for example, traffic congestion. See Sharma, 89 F.3d at 547

(holding that traffic congestions and parking problems that made the respondent one hour late did not constitute exceptional circumstances). Moreover, the Court questions Respondent's sagacity in scheduling a flight, due to arrive at 11:59 p.m. on June 24, 2014, when his hearing was scheduled for the next day at 8:00 a.m. See Resp't Mot., Tab A. While Respondent stresses the importance of a business meeting he was allegedly obliged to attend, see id., Decl., his voluntary choice to attend said meeting the day before his scheduled removal hearing does not constitute an exceptional circumstance *beyond his control*, as described or contemplated by INA § 240(e)(1).

Based on the foregoing, the Court declines to reopen Respondent's case on the basis of exceptional circumstances. As this Court is denying Respondent's motion to reopen, there is no basis on which to issue a stay of removal.

Accordingly, the following orders shall be entered:

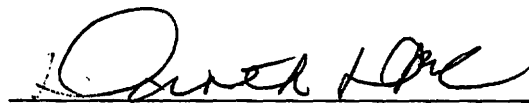
ORDERS

IT IS HEREBY ORDERED that Respondent's motions to reopen be **DENIED**.

IT IS FURTHER ORDERED that Respondent's request for stay be **DENIED**.

DATE:

9/23/14



Dorothy D. Bradley
Immigration Judge

CERTIFICATE OF SERVICE	
THIS DOCUMENT WAS SERVED BY:	
<input checked="" type="checkbox"/> MAIL (M)	<input type="checkbox"/> PERSONAL SERVICE (P)
TO: <input type="checkbox"/> ALIEN	<input type="checkbox"/> ALIEN c/o Custodial Officer
<input checked="" type="checkbox"/> ALIEN'S ATT/REP	<input checked="" type="checkbox"/> DHS
DATE: <u>9/23/14</u>	BY: COURT STAFF <u>[Signature]</u>
Attachments: <input type="checkbox"/> EOIR-33	<input type="checkbox"/> EOIR-28
<input type="checkbox"/> Legal Services List	<input type="checkbox"/> Other