



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

**AYALA MONZON, MARIO BLADIMIR
247 E. 43RD PLACE
LOS ANGELES, CA 90011**

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

Name: AYALA MONZON, MARIO BLADI... A 206-409-571

Date of this notice: 2/13/2017

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:
Grant, Edward R.
Mann, Ana
Adkins-Blanch, Charles K.

Userteam: Docket

**For more unpublished BIA decisions, visit
www.irac.net/unpublished/index/**

Handwritten initials

Falls Church, Virginia 22041

File: A206 409 571 – Los Angeles, CA

Date: FEB 13 2017

In re: MARIO BLADIMIR AYALA MONZON a.k.a. Joaquin Antonio Mendoza

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed in absentia on October 6, 2015. On October 26, 2015, he filed a motion to reopen proceedings, which the Immigration Judge denied on February 9, 2016. The respondent filed a timely appeal of that decision. The Department of Homeland Security has not submitted a response. The respondent's appeal will be sustained, the proceedings will be reopened, and the record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent contends that he did not receive notice of his October 6, 2015, hearing. The affidavit submitted with his motion stated that he received neither the Notice to Appear ("NTA") nor the Notice of Hearing ("NOH") (Respondent's Motion at 7). As the respondent was personally served with the NTA on August 2, 2014, that assertion is not supported by the record (I.J. at 1; Exh. 1).

Nevertheless, the record supports the respondent's claim that he did not receive the subsequently-issued NOH. *See Sembiring v. Gonzales*, 499 F.3d 981, 987-90 (9th Cir. 2007) (discussing the weaker presumption of delivery of the hearing notice sent through regular mail, and holding that an unsworn written statement of non-receipt of the notice may be sufficient to rebut the presumption of delivery). Although the NOH was apparently sent to the most recent address provided by the respondent and where he continues to reside, the record reflects that it was returned to the court for unknown reasons, as the original NOH and its accompanying envelope are in the record of proceedings. The respondent therefore cannot be charged with receiving notice of his hearing. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the in absentia order of removal is rescinded, the proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.

A handwritten signature in black ink, appearing to be "C. D. S. R.", written over a horizontal line.

FOR THE BOARD

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

AYALA MONZON, MARIO BLADIMIR
247 E. 43rd Place
Los Angeles, CA 90011

IN THE MATTER OF
AYALA MONZON, MARIO BLADIMIR

FILE A 206-409-571

DATE: Feb 10, 2016

UNABLE TO FORWARD - NO ADDRESS PROVIDED

X 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 22041

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

OTHER: _____


COURT CLERK
IMMIGRATION COURT

CC: PARK, JEANNETTE, ESQ.
606 SO. OLIVE ST., 8TH FLOOR
LOS ANGELES, CA, 900140000

FF

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

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Order of the Immigration Judge

Granted ~~X (Denied)~~ because:

 The respondent does not oppose the motion

Good cause has been established for the motion

motion

The application(s) for relief must be filed by the hearing Nov 28 13

by

David Hunt

Immigration Judge

To: ☒ Alien () Alien c/o Custodial officer () Alien's Atty/Rep ☒

Date: 2/10/16

By: Court Staff 