



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: F [REDACTED]-P [REDACTED], R [REDACTED] A [REDACTED]... A [REDACTED]-545

Date of this notice: 6/25/2020

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:
Adkins-Blanch, Charles K.
Couch, Stuart V.
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-545 – Houston, TX

Date:

JUN 25 2020

In re: R [REDACTED] A [REDACTED] F [REDACTED]-P [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rosana Kit Wai Cheung, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, has appealed the Immigration Judge's decision dated April 16, 2018, denying her motion to reopen proceedings in which she was ordered removed in absentia on March 9, 2006. The Immigration Judge's March 9, 2006, decision is the final administrative order in this matter. The appeal will be dismissed in part, and the record remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review 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 was ordered removed in absentia on March 9, 2006. On March 12, 2018, she filed a motion to reopen and rescind her in absentia removal order, arguing that she did not receive notice of the missed hearing. An in absentia removal order may be rescinded upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in accordance with sections 239(a)(1) or (2) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1), (2). See section 240(b)(5)(C) of the Act, 8 U.S.C. § 1229a(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii); see also *Matter of Guzman*, 22 I&N Dec. 722, 723 (BIA 1999). Proper notification under section 239(a)(1) of the Act includes informing a respondent of the time and place for his or her scheduled appearance before an Immigration Judge. See section 239(a)(1)(G)(i) of the Act.

For the reasons cited in the Immigration Judge's decision, we affirm her determination that the respondent did not establish a basis for reopening due to lack of notice (IJ at 2-3). The respondent's arguments on appeal do not overcome the Immigration Judge's determination (Respondent's Br. at 7).

The respondent also requested reopening of her removal proceeding to apply for asylum and related relief based on changed country conditions in El Salvador (Respondent's Br. at 7-8; Respondent's Motion to Reopen at 7-17). There is no time limit for motions to reopen to apply for asylum and withholding of removal based on materially changed country conditions. See section 240(c)(7)(C)(ii) of the Act. Additionally, the respondent was not required to rescind her in absentia removal order before seeking reopening on this basis. See *Matter of J-G-*, 26 I&N Dec. 161, 165 (BIA 2013). In denying the respondent's motion to reopen, the Immigration Judge

addressed only her lack of notice argument and her request for sua sponte reopening. The Immigration Judge did not analyze whether the respondent had met the requirements for reopening under section 240(c)(7)(C)(ii) of the Act based on changed country conditions in El Salvador, or whether she submitted the requisite material evidence, or established prima facie eligibility for the underlying relief sought. *Matter of J-G-*, 26 I&N Dec. at 169 (citations omitted). Thus, remand is appropriate for the Immigration Judge to further consider the respondent's motion to reopen.

We express no opinion regarding the ultimate outcome of these proceedings. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is dismissed in part.

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



FOR THE BOARD