



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Gutherz, Steve Jeffrey
Steve J. Gutherz, P.C.
675 Massachusetts Avenue
Cambridge, MA 02139**

**DHS/ICE Office of Chief Counsel - SNA
8940 Fourwinds Drive, 5th Floor
San Antonio, TX 78239**

Name: BLANCO-MEJIA, IDALIA ESMER... A 077-665-955

Date of this notice: 8/29/2016

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.
Adkins-Blanch, Charles K.
Grant, Edward R.

Userteam: Docket

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Falls Church, Virginia 22041

File: A077 665 955 – San Antonio, TX

Date:

AUG 29 2016

In re: IDALIA ESMERALDA BLANCO-MEJIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Steve Guthertz, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed in absentia on August 17, 2001. On June 16, 2014, the respondent filed a motion to reopen proceedings. The Immigration Judge denied that motion on September 19, 2014, and the respondent filed the instant appeal. The appeal will be sustained, the in absentia order will be vacated, proceedings will be reopened, and the record will be remanded.

Upon de novo review of the record and in light of the totality of circumstances presented in this case we find it appropriate to reopen these proceedings and allow the respondent another opportunity to appear for a hearing before an Immigration Judge. In reaching this conclusion we note that the respondent was a minor at the time she was served with the Notice to Appear and further note that the Department of Homeland Security has not filed an opposition to the motion to reopen proceedings or to the appeal. In addition, the respondent is the beneficiary of an approved I-130 and may be eligible to adjust her status.

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
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

Steve J. Gutherz, P.C.
Gutherz, Steve Jeffrey
675 Massachusetts Avenue
Cambridge, MA 02139

IN THE MATTER OF
BLANCO-MEJIA, IDALIA ESMERALDA

FILE A 077-665-955

DATE: Sep 23, 2014

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 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
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

OTHER:

COURT CLERK
IMMIGRATION COURT

FF

CC: DISTRICT COUNSEL
8940 FOURWINDS DR., 5TH FLOOR
SAN ANTONIO, TX, 782971939

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207**

IN THE MATTER OF)

BLANCO-MEJIA, IDALIA ESMERALDA)

RESPONDENT)

IN REMOVAL PROCEEDINGS)

Case No. **A077-665-955**

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended: Alien present in the United States without admission or parole.

APPLICATION: 8 C.F.R. § 1003.23(b): Motion to Reopen.

ON BEHALF OF THE RESPONDENT

Steve Gutherz, Esq.
Steve J. Gutherz, P.C.
675 Massachusetts Ave., 9th Fl.
Cambridge, MA 02139

ON BEHALF OF THE GOVERNMENT

U.S. Immigration & Customs Enforcement
Office of the Chief Counsel
8940 Fourwinds Dr., 5th Fl.
San Antonio, TX 78239

WRITTEN DECISION & ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

The respondent is a thirty-three-year-old female, native and citizen of El Salvador, who entered the United States at or near Eagle Pass, Texas, on or about November 15, 1999. *See* Exhibit #1; *see* Record of Deportable/Inadmissible Alien, Form I-213; *see also* Respondent's Motion to Reopen at 2. On November 15, 1999, the Immigration and Naturalization Service (INS), now known as the Department of Homeland Security (DHS), personally served the respondent with a Notice to Appear (NTA), charging her as removable pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), as amended, as an alien present in the United States without admission or parole. *See* Exhibit #1.

The NTA contains a section titled “**Failure to appear**” that specifies, *inter alia*, the consequences of failing to appear for any scheduled hearings. *Id.* The NTA reflects that the respondent was advised of the consequences of non-appearance in the Spanish language. *Id.*

On August 13, 2001, the respondent was not present for her hearing before the Court and was unavailable for examination under oath. Pursuant to the authority provided in section 240(b)(5)(A) of the Act, the Court proceeded *in absentia* and ordered the respondent removed from the United States to El Salvador on the charge contained in the NTA.

On June 16, 2014, the respondent filed with the Court a motion to reopen her removal proceedings and rescind her *in absentia* removal order. The DHS has not filed a response to the respondent’s motion.

II. Motion to Reopen

An *in absentia* order of removal may be rescinded only (i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances, or (ii) upon a motion to reopen filed at any time if the alien demonstrates that she did not receive notice in accordance with paragraph (1) or (2) of section 239(a) of the Act, or the alien demonstrates that she was in Federal or State custody and the failure to appear was through no fault of her own. *See* Section 240(b)(5)(C) of the Act; *see also* 8 C.F.R. § 1003.23(b)(4)(ii).

A. Exceptional Circumstances

Over fourteen years have passed between the date the Court ordered the respondent removed *in absentia* and the date the respondent filed her motion to reopen. As such, her motion to reopen based on exceptional circumstances is time-barred. *Id.*

B. Notice

Personal service of the NTA on the respondent was proper. *See* Exhibit #1. The regulations require that if an alien is “under the age of 14,” the NTA must be served upon the person with whom the minor resides. *See* 8 C.F.R. § 1236.2(a). While the Court notes a discrepancy in the age of the respondent, the respondent’s Record of Deportable/Inadmissible Alien, Form I-213, and motion to reopen indicate that she was over the age of fourteen-years-old when immigration officials personally served her with the NTA. *See* Respondent’s Motion to Reopen at 2; *see also* Record of Deportable/Inadmissible Alien, Form I-213. Because the respondent was at least fourteen-years-old when immigration officials served her with the NTA,

personal service on the respondent was proper. *See Matter of Cubor*, 25 I&N Dec. 470, 473 (BIA 2011).

As required by section 239(a)(1) of the Act, the NTA advised the respondent of her obligation to provide an address to the Immigration Court and advised her of the consequences of failing to appear before the Court. *See Exhibit #1*. The respondent was also orally advised in the Spanish language of the consequences of non-appearance. *Id.* Despite this, the respondent failed to provide an address as required. *Id.*

The respondent, through counsel, has not provided an explanation for her failure to provide her address to the Court. *See Respondent's Motion to Reopen*. Rather, the respondent, through counsel, states that she was not aware of her legal obligations. *Id.* at 3. She also states that she never received a notice of hearing with an exact date to appear before the Court. *Id.* The Act specifically provides a method for notifying aliens of a change in the time or place of removal proceedings. *See Section 239(a)(2) of the Act*. Because the respondent did not provide her address as required, the Court was not required to mail her a notice of hearing notifying her of the date and time of her scheduled hearing. *See Section 239(a)(2)(B) of the Act*. Furthermore, because the respondent neglected an obligation of which she was notified in the NTA, failure to receive notice of her hearing is not a ground for reopening her removal proceedings. *See Gomez-Palacios v. Holder*, 560 F.3d 354, 360-61 (5th Cir. 2009).

The respondent has presented evidence of an approved petition for Alien Relative, Form I-130. *See Respondents Motion to Reopen* at 22. However, the respondent has not alleged or established that she is eligible to adjust her status and no such application has been received. *See Respondents Motion to Reopen*.

Accordingly, the following order shall be entered:

ORDER

IT IS HEREBY ORDERED that the respondent's motion to reopen is **DENIED**.

Date: SEPT. 19, 2014



Glenn P. McPhaul
United States Immigration Judge