U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: BONILLA-MEJIA, BRENDA YAMI... **A 078-277-418**

Date of this notice: 10/26/2017

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:
Adkins-Blanch, Charles K.
Kelly, Edward F.
Mann, Ana

Userteam: Docket

File: A078 277 418 – Harlingen, TX

Date: OCT 26 2017

In re: Brenda Yamileth BONILLA-MEJIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ian A. Taronji, Esquire

ON BEHALF OF DHS: Guillermo Rey de la Garza, Esquire
Assistant Chief Counsel

APPLICATION: Reopening

The respondent appeals the May 4, 2017, Immigration Judge's decision denying her motion to reopen her removal proceedings after the issuance of an in absentia order of removal on February 21, 2001. The Department of Homeland Security (DHS) filed a motion for summary affirmance and opposition to the appeal. The appeal will be sustained.

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).

Pursuant to section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C), an in absentia removal order may be rescinded upon a motion to reopen filed (i) within 180 days after the date of the removal order if the alien demonstrates that the failure to appear was because of exceptional circumstances, or (ii) 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 Act, or that the alien was in Federal or State custody and did not appear through no fault of the alien. Sections 240(b)(5)(C)(i) and (ii) of the Act; *see also Matter of Guzman*, 22 I&N Dec. 722, 722-23 (BIA 1999).

In this case, the respondent was 12 years old when she arrived in the United States (Exh. 2A). The DHS served the Notice to Appear on the respondent and her adult cousin (Exh. 1). The NTA indicates that no mailing address was provided to contact the respondent, and the Record of Deportable/Inadmissible alien (Form I-213) indicates that "no EOIR date could be obtained within the 24 hour time limit due to system being down" (Exhs. 1, 2A). On February 21, 2001, an Immigration Judge ordered the respondent removed in absentia without notifying the respondent because she did not provide any address to the Court where she could be notified of a removal hearing. The discussion on the respondent's Form I-213 continuation page relates to the respondent's cousin (Exh. 2A). It appears that the respondent's mother resided in the United States when the respondent was released from custody.

On appeal, the respondent argues that this case should be reopened in the exercise of the Immigration Judge's or the Board's sua sponte authority (Respondent's Br.). The DHS argues that the Board should summarily affirm the Immigration Judge's denial of the respondent's motion to reopen and rescind the in absentia order of removal entered in 2001 (DHS's Opposition to the Respondent's Appeal).

We conclude that the NTA was improperly served on a minor. The parties do not dispute that the respondent was under the age of 14 at the time of service of the Notice to Appear (DHS Opposition to Respondent's Appeal; Respondent's Brief). It is unclear whether the respondent, who was 12 years old at the time, or her cousin signed the NTA (Exh. 1). Even assuming that the individual who signed the NTA is the respondent's cousin, we conclude that service of the NTA was not properly effected in accordance with the pertinent regulations. The record does not establish the respondent resided with her cousin at the time of service, instead it shows that she was in the custody of the DHS (Exhs. 1, 2A; DHS's Opposition to the Motion to Reopen; Respondent's Brief). *See* 8 C.F.R. § 103.8(c)(2)(ii) (stating that "service shall be made upon the person with whom the . . . minor resides"); *see also Matter of Gomez-Gomez*, 23 I&N Dec. 522, 527-28 (BIA 2002) (holding that an 8-year-old respondent received proper notice where the NTA was served on her father, with whom she was residing); *Matter of Mejia-Andino*, 23 I&N Dec. 533, 536 (BIA 2002) (concluding that, "when it appears that the minor child will be residing with her parents in this country, . . . the regulation requires service on the parents, whenever possible").

In light of the foregoing, we will vacate the Immigration Judge's decision denying the motion to reopen, rescind the in absentia order of removal, reinstate the removal proceedings, and remand the record to the Immigration Judge to allow the DHS the opportunity to re-serve the Notice to Appear in accordance with 8 C.F.R. § 103.8(c)(2)(ii) and applicable authority. *See, e.g.*, *Matter of Mejia-Andino*, 23 I&N Dec. at 536. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained, and the Immigration Judge's decision is vacated. The order of removal entered in absentia, on February 21, 2001, is rescinded.

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

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
2009 WEST JEFFERSON AVENUE, SUITE 300
HARLINGEN, TEXAS 78550

IN THE MATTER OF:	)	
	)	
BRENDA YAMILETH BONILLA-MEJIA	)	CASE NO. **A078 277 418**
	)	
RESPONDENT	)	
IN REMOVAL PROCEEDINGS	)	

MEMORANDUM AND ORDER

On April 14, 2017, Respondent, through her counsel of record Ian A. Taronji, filed a motion to reopen this removal proceeding. The removal order was issued in this case on February 21, 2001 based upon a removal hearing conducted in absentia on that same date pursuant to section 240(b)(5)(A) and (B) of the Immigration and Nationality Act (the Act). The Department of Homeland Security filed a timely response in opposition to the motion to reopen.

In the motion to reopen, Respondent requests reopening so she can pursue relief "in the form of an application for an I-130". The Court concludes that Respondent's motion to reopen for this purpose is untimely because it was not filed within 90 days of the date of entry of the final administrative order of removal. Section 240(c)(7)(C)(i) of the Act; 8 C.F.R. § 1003.23(b)(1).

WHEREFORE, it is hereby Ordered that Respondent's motion to reopen be denied.

DATED THIS 4TH day of May, 2017.

Howard Achtsam

HOWARD ACHTSAM
IMMIGRATION JUDGE

HEA/bjr