



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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**Raleigh, NC 27606**

**DHS/ICE Office of Chief Counsel - CHL**  
**5701 Executive Ctr Dr., Ste 300**  
**Charlotte, NC 28212**

**Name: BOASIAKO, NANA ANTWI**

**A 096-835-772**

**Date of this notice: 9/9/2013**

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.  
Grant, Edward R.  
Hoffman, Sharon

williams  
User team: Docket

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Falls Church, Virginia 22041

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File: A096 835 772 – Charlotte, NC

Date:

SEP - 9 2013

In re: NANA ANTWI BOASIAKO

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Japheth N. Matemu, Esquire

ON BEHALF OF DHS: Colleen E. Taylor  
Assistant Chief Counsel

APPLICATION: Reopening; remand

The respondent, a native and citizen of Ghana, appeals the Immigration Judge's decision, dated February 22, 2012, that denied his motion to reopen an in absentia order of removal entered on November 7, 2011. While on appeal, the respondent filed a motion to remand his case to the Immigration Judge, because the visa petition, filed on his behalf by Alice M. Young, was approved on February 13, 2012. The Department of Homeland Security requests summary affirmance of the Immigration Judge's decision, but did not respond to the respondent's recent motion to remand. The appeal will be sustained, and the record will be remanded.

We agree with the Immigration Judge that the respondent did not establish exceptional circumstances for his failure to appear at his hearing on November 7, 2011. However, given his diligence in attending prior hearings, he makes a plausible claim that he did not receive actual notice of this hearing, and the record establishes that, given the pendency of the visa petition filed on his behalf, he had every incentive to appear at that hearing. Accordingly, and in light of the approval of the visa petition, we conclude that the motion to reopen the in absentia order should be granted and the record remanded for further proceedings. As a result, the following order will be entered.

ORDER: The record is reopened and remanded to the Immigration Judge for further proceedings consistent with this order.

  
\_\_\_\_\_  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
5701 EXECUTIVE CENTER DR. #400  
CHARLOTTE, NC 28212

PARK ESQ, GEORGEANNA MARIE  
5 W. HARGETT ST. SUITE 1000  
RALEIGH, NC 27601

Date: Feb 22, 2012

File A096-835-772

In the Matter of:  
BOASIAKO, NANA ANTWI

Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before \_\_\_\_\_. The appeal must be accompanied by proof of paid fee (\$110.00).

Enclosed is a copy of the oral decision.

Enclosed is a transcript of the testimony of record.

You are granted until \_\_\_\_\_ to submit a brief to this office in support of your appeal.

Opposing counsel is granted until \_\_\_\_\_ to submit a brief in opposition to the appeal.

Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

  
Immigration Court Clerk

UL

cc: LISA DURANT., ESQ  
5701 EXECUTIVE CENTER DR, 300  
CHARLOTTE, NC 28212

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
CHARLOTTE, NORTH CAROLINA

IN THE MATTER OF	)	IN REMOVAL PROCEEDINGS
	)	
NANA ANTWI BOASIAKO,	)	File No. 096-835-772
	)	
Respondent.	)	MINUTE ORDER
	)	
	)	February 22, 2012
	)	

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NOW COMES the Court, upon review and consideration of Respondent's "Motion to Reopen In Absentia Order and Automatic Stay of Removal and Request for Adjudication of I-130, I-485 & I-765"<sup>1</sup> filed on January 9, 2012; the Department of Homeland Security's (DHS) response filed February 3, 2012; and the record of proceedings; and the Court now finds the following:

1. That Respondent was served with a Notice to Appear (NTA) on March 30, 2010. Respondent was scheduled to appear at four (4) master calendar hearings;
2. That Respondent appeared *pro se* at a master calendar hearing on March 14, 2011, and was given a continuance until July 13, 2011 to allow the United States Citizenship and Immigration Service (USCIS) to adjudicate an I-130 petition filed on his behalf by his United States citizen spouse;
3. That Respondent was provided oral and written notice of his next scheduled master calendar hearing, and the consequences of his failure to appear;
4. That Respondent failed to appear at the master calendar hearing on July 13, 2011, and his case was rescheduled until November 7, 2011 because DHS did not have the administrative file available to proceed *in absentia*;
5. That on July 14, 2011, the day after Respondent failed to appear, he was sent a notice of hearing, at the address most recently provided, advising him of the master calendar scheduled for November 7, 2011; *see* Exhibit 2;
6. That Respondent again failed to appear at the master calendar hearing on November 7, 2011, and an order of removal was entered *in absentia* pursuant to Immigration and Nationality Act (INA) § 240(b)(5)(A);

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<sup>1</sup> Counsel is advised that the Court has no authority to adjudicate either petitions for alien relatives (Form I-130) or applications for employment authorization (Form I-765). 8 C.F.R. §§ 1001.1(l), 1003.10(b), 1003.12.

7. That Respondent claims exceptional circumstances caused him to miss his master calendar hearing on July 13, 2011, to wit: he experienced a gastrointestinal illness and severe diarrhea while en route to court;
8. That the medical documentation provided by Respondent does not state the medical reason for which he was seen by a medical clinic in Wake Forest, North Carolina on July 13, 2011;
9. That Respondent appeared at the court in Charlotte at 8:43 am on July 14, 2011, the day following his scheduled master calendar hearing;
10. That Respondent has not provided any explanation as to why he was absent from his master calendar hearing scheduled for November 7, 2011;
11. That a motion to reopen an *in absentia* order of removal must be filed within 180 days after the date of the order of removal; *see* INA § 240(b)(5)(C);
12. That a motion to reopen must be accompanied by an appropriate fee receipt, which is \$110.00; *see* 8 C.F.R. §§ 1003.23(b)(1)(ii), 1003.24(b), and 1103.7(b)(2);
13. That Respondent's motion to reopen filed on January 9, 2012, was filed within 180 days of the Court's removal order entered on November 11, 2011;
14. That Respondent's motion to reopen was accompanied by a photocopy of \$110.00 in United States currency, but without an appropriate fee receipt indicating that the fee was actually paid to USCIS;
15. That Respondent has not demonstrated his failure to appear was because of exceptional circumstances as defined in INA § 240(e)(1); and
16. That this Court has discretion to deny the motion to reopen Respondent's case pursuant to 8 C.F.R. § 1003.23(b)(3), and hereby exercises that discretion.

Accordingly, the Court enters the following

**ORDER**

IT IS HEREBY ORDERED that Respondent's motion to reopen of January 9, 2012 is DENIED.

2/22/12

Date

V. Stuart Couch

V. STUART COUCH  
United States Immigration Judge  
Charlotte, North Carolina