



U.S. Department of Justice

Executive Office for Immigration Review

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Name: L [REDACTED] G [REDACTED], J [REDACTED] P [REDACTED]

A [REDACTED]-345

Date of this notice: 3/26/2020

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:
Mann, Ana
Mullane, Hugh G.
Grant, Edward R.

Userteam: Docket

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Falls Church, Virginia 22041

File: A-345 – Los Angeles, CA

Date:

MAR 26 2020

In re: J-P-L-G

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert A. Espinosa, Esquire

APPLICATION: Reopening

On May 19, 2015, an Immigration Judge granted a joint request by the parties to administratively close the instant proceedings to allow the respondent an opportunity to pursue a provision waiver of inadmissibility. The Immigration Judge granted the Department of Homeland Security's motion to recalendar proceedings on September 6, 2017. The respondent, a native and citizen of Mexico, was ordered removed in absentia on November 7, 2017. On May 7, 2018, the respondent, through counsel, filed a motion to reopen proceedings. The Immigration Judge denied the motion on June 6, 2018, and the respondent filed the instant appeal and motion to remand. He also seeks a stay of removal. The appeal will be sustained, the in absentia order vacated, the proceedings reopened, and the record will be remanded.

Upon de novo review of the record 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 initiated proceedings by filing an application for asylum and had an incentive to appear to pursue this application in immigration court. In addition, the respondent has submitted an application for cancellation of removal accompanied by supporting documentary evidence, as well as evidence that he is the beneficiary of an approved visa petition filed on his behalf by his United States citizen wife. The respondent has also submitted an affidavit averring he did not receive notice of his reschedule hearing. *See Tadevosyan v. Holder*, 743 F.3d 1250, 1256 (9th Cir. 2014) (Board must accept evidence supporting a motion to reopen as true unless that evidence is "inherently unbelievable.").

In sum, we find that the respondent has overcome the presumption of delivery. *Sembiring v. Gonzales*, 499 F.3d 981,988 (9th Cir. 2007); *Matter of M-R-A-*, 24 I&N Dec. 665, 673-676 (BIA 2008) (holding, consistent with precedent in the Ninth Circuit, that an alien may present evidence to overcome the weaker presumption of delivery that attaches with notices sent by regular mail). Therefore, we will sustain the appeal and allow the respondent another opportunity to appear for a hearing.¹ Accordingly, the following orders shall be entered.

ORDER: The appeal is sustained, and the respondent's stay request is granted.

¹ In light of our decision, we need not reach the other arguments in the respondent's motion to remand.

FURTHER ORDER: The Immigration Judge's November 7, 2017, in absentia order is vacated and proceedings are reopened.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings.


FOR THE BOARD

Board Member Hugh G. Mullane respectfully dissents without opinion.