



**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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Marlborough, MA 01752**

**DHS/ICE Office of Chief Counsel - BOS  
P.O. Box 8728  
Boston, MA 02114**

**Name: GOMES, MANOEL FLOR**

**A 097-749-716**

**Date of this notice: 3/8/2019**

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.

User team: Docket

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Falls Church, Virginia 22041

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File: A097-749-716 – Boston, MA

Date: **MAR - 8 2019**

In re: Manoel Flor GOMES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eloa J. Celedon, Esquire

ON BEHALF OF DHS: Brandon Lowy  
Assistant Chief Counsel

APPLICATION: Reopening

The respondent appeals the Immigration Judge's decision dated September 16, 2018. The Immigration Judge denied the respondent's motion to reopen an in absentia order. The record will be remanded.

In denying the motion to reopen, the Immigration Judge used a form order which did not adequately identify the reasons for denying the respondent's motion. The Immigration Judge noted on the form order the following: "See Matter of Bermudez-Cota 27 I&N 441." There is no explanation for what proposition this case was being used. Without adequate explanation of the reasons for the Immigration Judge's decision, the Board is not meaningfully able to review the appeal. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999); *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (holding that when a motion to reopen proceedings is denied, the Immigration Judge must identify and fully explain the reasons for such decision); *see also Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002).

Moreover, the Immigration Judge did not make any findings of fact regarding the respondent's argument that he never received a hearing notice.<sup>1</sup> Further, the Immigration Judge did not address the respondent's request that the Immigration Judge exercise his sua sponte authority to reopen the respondent's case.

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<sup>1</sup> The Board notes that the hearing notice dated May 2, 2005, although addressed to the respondent's last known address, does not indicate at the bottom of the form whether it was served on the respondent by mail or in person. Further, the record contains the respondent's sworn affidavit, dated July 26, 2018, claiming that in addition to not receiving the hearing notice, the oral notice he received at the time he was apprehended was in the Spanish language, which is confirmed by the Notice to Appear (NTA). The respondent claims that he did not understand English and only understood some Spanish at the time he was given the oral notice (he is from Brazil where the language spoken is Portuguese). Therefore, he indicates that he was not provided proper notice of the contents of the NTA, the consequences of failing to appear, or his responsibility to inform the court of an address change.

The record will be returned to the Immigration Judge for preparation of a full decision containing the necessary findings of facts and conclusions of law and adjudicating the respondent's motion to reopen. Upon preparation of the full decision, if the motion to reopen is not granted, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the respondent and the Department of Homeland Security. The Board will thereafter give the parties an opportunity to submit briefs in accordance with the regulations.

Accordingly, the following order shall be entered.

ORDER: The record is remanded to the Immigration Court for further action as required above.

  
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FOR THE BOARD