



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Campos, Victoria  
Law Office of Victoria Campos, PC  
1677 New York Avenue  
Huntington Station, NY 11746**

**DHS/ICE Office of Chief Counsel - SND  
880 Front St., Room 2246  
San Diego, CA 92101-8834**

**Name: RIVAS MOJICA, CECILIA Y**

**A 202-175-637**

**Date of this notice: 11/4/2015**

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:  
Holiona, Hope Malia  
Holmes, David B.  
Miller, Neil P.

Userteam: Docket

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*577*

Falls Church, Virginia 22041

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File: A202 175 637 – San Diego, CA

Date:

NOV - 4 2015

In re: CECILIA Y. RIVAS MOJICA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Victoria Campos, Esquire

ON BEHALF OF DHS: Scott Simpson  
Assistant Chief Counsel

The Immigration Judge entered an in absentia removal order in this case on May 19, 2015. On June 11, 2015, the respondent filed a motion to reopen to rescind the in absentia order. The Immigration Judge denied the motion on July 10, 2015, decision, and the respondent appealed that decision. The Department of Homeland Security (DHS) has filed an opposition to the appeal. The appeal will be sustained.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii). The respondent asserts that she did not attend the hearing because the attorney she had hired told her she did not need to because he was going to have her case transferred from California to New York. She argues on appeal that because her motion to reopen to rescind was filed pro se, her motion should not have been denied for lack of adherence to the guidelines set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The respondent was 18 years old and pro se in the proceedings below. With her motion to reopen to rescind, she submitted her own sworn affidavit as well as the affidavit of her uncle. The affidavits, which we take to be true in this case arising in the Ninth Circuit, reflect that the respondent had hired an attorney to represent her and he told her that she did not have to appear for her scheduled hearing because he had filed a change of venue motion. Within a matter of days of receiving the Immigration Judge's in absentia removal order, she and her uncle went to the attorney's office. Apparently acknowledging that the case had been mishandled, the attorney refunded the fees paid. The respondent submitted evidence of the refunds with her motion. The respondent then promptly filed her motion to reopen to rescind on June 11, 2015. Further, the record reflects the respondent's intention to file an affirmative asylum application. In view of all these circumstances, we conclude that the respondent should be afforded a further opportunity to have a hearing before the Immigration Judge. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the removal 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  
401 WEST A STREET, SUITE #800  
SAN DIEGO, CA 92101

RIVAS MOJICA, CECILIA Y  
6 LEXINGTON AVE  
BRENTWOOD, NY 11717

Date: Jul 10, 2015

File A202-175-637

In the Matter of:  
RIVAS MOJICA, CECILIA Y

X 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 8-10-15. 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.

X 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: SIMPSON, JONATHAN S., ASSISTANT CHIEF COUNSEL  
880 Front St. Suite 2246  
San Diego, CA 92101

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE OF IMMIGRATION REVIEW  
IMMIGRATION COURT  
SAN DIEGO, CALIFORNIA

-----X  
In the matter of

CECILIA Y. RIVAS MOJICA

A# 202-175-637

Respondent

In Removal Proceedings

-----X

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's Motion To Reopen Removal Proceedings request, it is HEREBY ORDERED that the Motion be       ~~GRANTED~~       or       ✓        
DENIED because:

- ☐ DHS does not oppose the motion.
- ☐ The Respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☒ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per \_\_\_\_\_.
- ☒ Other: See attached.

Deadlines:

- ☐ The application for relief must be filed by \_\_\_\_\_.
- ☐ The Respondent must comply with DHS biometrics instructions by \_\_\_\_\_.

7-10-15  
Date

  
Immigration Judge

Certificate of Service

This document was served by: ☒ Mail ☒ Personal Service  
To: ☒ Alien ( ) Alien c/o Custodial Officer ( ) Alien's Attorney/Rep ☒ DHS

Date: 7-10-15

By: Court Staff AD

The Court agrees with the DHS opposition to the motion. The respondent has not shown that the facts warrant an exemption from the general requirements for presenting a claim of ineffective assistance of counsel as set forth in Matter of Lozada, 19 I&N Dec. 637 (BIA 1988). Pursuant to Lozada, the motion to reopen must include: (1) an affidavit by the respondent detailing the agreement entered into with former counsel; (2) evidence that counsel has been informed of the allegations leveled against him/her and that he/she has been afforded the opportunity to respond; and (3) information whether a complaint has been filed with the appropriate disciplinary authorities and if not, why not. Lozada, *supra*, at 639.

Here, there is no indication whether a complaint has been filed with the appropriate disciplinary authorities and if not, why not.

The respondent has the right to appeal this decision and may wish to seek alternate counsel to discuss other options that may be available to her.