U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: MEJIA, JOSE RAMIRO

A 074-011-801

Date of this notice: 3/10/2020

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.

Sharic[illegible]
Userteam: Docket

File: A074-011-801 – Orlando, FL

Date: MAR 10 2020

In re: Jose Ramiro MEJIA a.k.a. Jose Martinez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Efrain Alsina Rios, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's September 7, 2018, decision, served on the parties on September 24, 2018, and denying his May 21, 2018, motion to reopen and rescind his in absentia removal order entered on July 13, 2010. The Department of Homeland Security (DHS) has not responded to the appeal. The appeal will be sustained, and the record will be remanded for further proceedings.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that the Immigration Judge erred in concluding he received proper notice of his removal proceedings (Respondent's Br. at 2-4).[1] In particular, the respondent maintains that the DHS mailed the Notice to Appear (NTA) on March 22, 2010, to an address he had listed on an application for Temporary Protected Status (TPS) in 2007 rather than to the address on a TPS application he later filed in 2008 (Exh. 1; Respondent's Mot. to Reopen at Tabs 1, 5). He asserts that because the NTA and subsequent Notices of Hearing were not mailed to the most recent address he provided to the DHS, the Immigration Judge improperly entered an in absentia removal order when the respondent failed to appear at his initial hearing (Exhs. 1-2; Respondent's Mot. to Reopen; Respondent's Br. at 3-4).

Upon review, reopening is warranted because the respondent did not receive notice reasonably calculated to ensure his appearance before the Immigration Court. *See* section 240(a)(b)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(A) (authorizing the entry of an in absentia order only after the respondent receives, in writing, the warnings and advisals contained in the NTA provided at the respondent's last known address); *see also Matter of Anyelo*, 25 I&N Dec. 337, 339 (BIA 2010) (explaining that an in absentia order may only be entered where the respondent received or can be charged with receiving the NTA at the last address he provided to the DHS); *Matter of G-Y-R-*, 23 I&N Dec. 181, 192 (BIA 2001) (finding an in absentia order inappropriate where the respondent did not receive, or could not be charged with receiving, an

[1] The Immigration Judge's written decision is not paginated. Therefore, we are unable to provide citations to the specific pages of the decision.

NTA served at an address obtained from documents filed several years earlier). Here, the DHS had notice that the respondent moved from an address on Karl Lane to one on Poquito Avenue between the filing of his applications for TPS in 2007 and 2008, as the agency mailed multiple documents to the Poquito Avenue address in 2009 (Respondent's Br. at Tab 1). Thus, because the DHS did not use the last address provided by the respondent to the agency, the NTA and Notices of Hearing sent to the Karl Lane address were insufficient in notifying the respondent of the proceedings commenced against him.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The in absentia removal order is rescinded, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.

FOR THE BOARD