



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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8757 Georgia Avenue
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Silver Spring, MD 20910

DHS/ICE Office of Chief Counsel - SNA
8940 Fourwinds Drive, 5th Floor
San Antonio, TX 78239

Name: GALEAS OCHOA, SINDY MARB...
Riders: [REDACTED] 662

A 208-258-661

Date of this notice: 12/15/2016

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:
Grant, Edward R.
Mann, Ana
O'Connor, Blair

sg/awp

Userteam: Docket

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ng

Falls Church, Virginia 22041

Files: A208 258 661 – San Antonio, TX
A [REDACTED] 662

Date: **DEC 15 2016**

In re: SINDY MARBELLA GALEAS OCHOA
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Michelle N. Mendez, Esquire

APPLICATION: Reopening

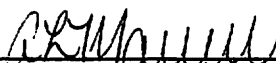
The respondents, natives and citizens of Honduras, appeal the decision of the Immigration Judge, dated June 21, 2016, denying their motion to reopen. The Department of Homeland Security has not replied to the respondents' appeal.

We review Immigration Judges' findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

Considering the totality of the circumstances, we conclude that the respondents have established that rescission of the orders of removal, entered in absentia on December 9, 2015, is appropriate on account of lack of notice. See section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(ii); 8 C.F.R. § 1003.23(b)(4)(ii); *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). Accordingly, we will reopen these proceedings in order to provide the respondents with a renewed opportunity to appear before an Immigration Judge to show why they should not be removed from the United States.

At the present time, we express no opinion regarding the ultimate outcome of these proceedings. Accordingly, the following order is entered.

ORDER: The respondents' appeal is sustained, the orders of removal, entered in absentia on December 9, 2015, are vacated, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings and the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

Catholic Legal Immigration Network, Inc.
Mendez, Michelle Natalia
8757 Georgia Avenue
Suite 850 (CLINIC)
Silver Spring, MD 20910

IN THE MATTER OF
GALEAS OCHOA, SINDY MARBELLA

FILE A 208-258-661

DATE: Jun 21, 2016

— UNABLE TO FORWARD - NO ADDRESS PROVIDED

✓ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

— ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

— OTHER: _____


COURT CLERK
IMMIGRATION COURT

FF

CC: ELLIOT R. SELLE
8940 FOURWINDS DR., 5TH FLOOR
SAN ANTONIO, TX, 78239

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of:
GALEAS OCHOA, SINDY MARBELLA

RESPONDENT

Case No.: A208-258-561

Docket: SAN ANTONIO, TEXAS

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of RESPONDENT

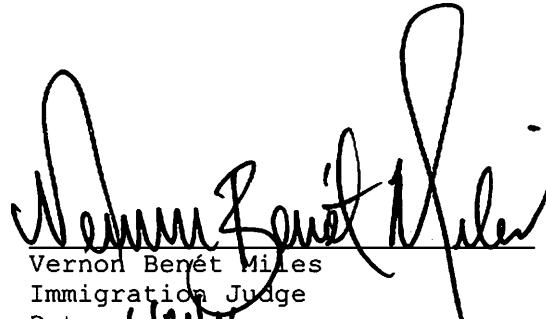
() Motion to Reconsider an Immigration Judge's decision

(✓) Motion to Reopen proceedings

filed in the above entitled matter, it is hereby ordered that the motion

() Be Granted

(✓) Be Denied for reasons indicated in the attached decision


Vernon Benet Miles
Immigration Judge
Date: 6/21/16

Appeal: NO APPEAL (A/I/B)
Appeal Due By: Jan 8, 2016

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [] ALIEN [] ALIEN c/o Custodial Officer [] Alien's ATT/REP [] DHS
DATE: 6-21-16 BY: COURT STAFF
Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TEXAS 78207**

In the Matters of

GALEAS-OCHOA, SINDY MARBELLA

Case No. A208-258-661

RESPONDENTS

Case No. [REDACTED]-662

In Removal Proceedings

CHARGE:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), as amended: Immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

APPLICATION:

8 C.F.R. § 1003.23(b): Motion to Reopen.

ON BEHALF OF THE RESPONDENTS

Michelle Natalia Mendez, Esq.
Catholic Legal Immigration Network, Inc.
8757 Georgia Avenue, Suite 850 (Clinic)
Silver Spring, MD 20910

ON BEHALF OF THE GOVERNMENT

U.S. Immigration & Customs Enforcement
Office of the Chief Counsel
8940 Fourwinds Drive, 5th Floor
San Antonio, TX 78297

WRITTEN DECISION & ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

The lead respondent is a twenty-four-year-old female, native, and citizen of Honduras, who entered the United States at or near El Paso, Texas, on or about September 14, 2015. Lead Respondent's Notice to Appear, Form I-862; Lead Respondent's Record of Determination/Credible Fear Worksheet, Form I-870. At the time of her arrival, the respondent

was accompanied by her now four-year-old son, [REDACTED]¹ Minor Respondent's Notice to Appear, Form I-862. On October 19, 2015, the Department of Homeland Security (DHS) personally served the respondent and, through her, her minor son, with their Notices to Appear (NTAs) charging them as removable pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), as amended, as immigrants who, at the time of application for admission, were not in possession of valid unexpired immigrant visas, reentry permits, border crossing cards, or other valid entry documents required by the Act, and valid travel unexpired passports, or other suitable travel documents, or documents of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. Lead Respondent's Notice to Appear, Form I-862; Minor Respondent's Notice to Appear, Form I-862.

The NTAs contain a section titled "**Failure to appear**" that specifies, *inter alia*, the consequences of failing to appear for any scheduled hearings. Lead Respondent's Notice to Appear, Form I-862; Minor Respondent's Notice to Appear, Form I-862. The NTAs reflect that the respondent was advised of the consequences of non-appearance in the Spanish language. Lead Respondent's Notice to Appear, Form I-862; Minor Respondent's Notice to Appear, Form I-862.

On October 20, 2015, the DHS released the respondent on parole. Lead Respondent's Notice to EOIR: Alien Address. Upon release from custody, the respondent provided the following address: 302 E. Pheasant Drive, Austin, TX 78753. *Id.* On December 9, 2015, the respondents were not present for their hearings before this Court and were unavailable for examination under oath. Pursuant to the authority provided in section 240(b)(5) of the Act, the Court proceeded *in absentia* and ordered the respondents removed from the United States to Honduras on the charge contained in their respective NTAs.

On May 23, 2016, the respondents, through counsel, filed motions to reopen their removal proceedings. The DHS did not file a brief in opposition to the respondents' motions.

II. Motion to Reopen

An *in absentia* order of removal may be rescinded only (i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances, or (ii) upon a motion to reopen filed at any

¹ The Court will refer to Ms. Galeas-Ochoa as "the respondent" and Mr. [REDACTED] as "the minor respondent."

time if the alien demonstrates that he or she did not receive notice in accordance with paragraph (1) or (2) of section 239(a) of the Act or the alien demonstrates that he or she was in Federal or State custody and the failure to appear was through no fault of his or her own. Section 240(b)(5)(C) of the Immigration and Nationality Act (2016); 8 C.F.R. § 1003.23(b)(4)(ii) (2016).

A. Notice

The record reflects that on October 19, 2015, immigration officials personally served the respondent with her and her minor son's NTAs. Lead Respondent's Notice to Appear, Form I-862; Minor Respondent's Notice to Appear, Form I-862. As required by section 239(a)(1) of the Act, the NTAs advised the respondent of her obligation to maintain a current mailing address with the Court and of the consequences of failing to appear for any scheduled hearings. Lead Respondent's Notice to Appear, Form I-862; Minor Respondent's Notice to Appear, Form I-862. The NTAs also advised the respondent of the consequences of non-appearance and failure to apprise the Court of any changes to the respondent's mailing address. Lead Respondent's Notice to Appear, Form I-862; Minor Respondent's Notice to Appear, Form I-862.

When a notice of hearing is sent by regular mail and is properly stamped and addressed according to normal office procedures, there is a presumption of delivery. *Matter of M-R-A-*, 24 I&N Dec. 665, 673 (BIA 2008). The presumption is weaker, however, than the presumption that applies to documents sent by certified mail. *Id.* To determine whether an alien has overcome the "weaker" presumption of delivery, the Court considers all of the submitted evidence, including the respondent's affidavit, affidavits from family members and other individuals, the respondent's actions upon learning of the *in absentia* order, prior affirmative applications for relief, the respondent's prior court appearances, and any other evidence or circumstances indicating non-receipt. *Id.* at 674.

The respondents, through counsel, assert that they never received notice of their hearing scheduled for December 9, 2015, at the San Antonio Immigration Court. Lead Respondent's Motion to Reopen Proceedings and Rescind *In Absentia* Removal Order at 3; Minor Respondent's Motion to Reopen Proceedings and Rescind *In Absentia* Removal Order at 3. On November 17, 2015, the Court mailed a notice of hearing to the respondent at the address she provided to immigration officials upon her release from the custody of DHS: 302 E. Pheasant Drive, Austin TX 78753. Lead Respondent's Notice to EOIR: Alien Address. The notice was not returned to the Court with any indication that it was undeliverable or otherwise not properly

received. The respondents failed to appear for their scheduled hearings on December 9, 2015. On December 9, 2015, the Court mailed the respondents' *in absentia* removal orders to the respondent at the same address. The removal orders were also not returned to the Court with any indication that they were undeliverable or otherwise not properly received. Furthermore, the respondent did not submit a Form-EOIR 33 notifying the Court of any change in the respondent's address. The respondent did not explain her failure to appear before the Court for over five months after her scheduled hearing on December 9, 2015, in which the Court ordered her and her son's removal to Honduras.

For the Court to reopen removal proceedings due to lack of notice, the respondent must show that her failure to receive notice was through no fault of her own. *See* INA § 240(b)(5)(C); *see also* 8 C.F.R. § 1003.23(b)(4)(ii). The respondent failed to submit any evidence establishing when she resided at the address she provided to immigration officials upon her release from custody or that notice of hearing was not received by some responsible party at that address. While the Court acknowledges that the respondent submitted her own declaration, the Court also recognizes that she neglected to submit any affidavit from family members or friends in order to corroborate and substantiate her claims. Consequently, the Court finds that the respondent has failed to overcome the presumption that the notice of hearing was delivered, and thus to establish that the alleged lack of notice was through no fault of her own.

B. *Sua Sponte*

An Immigration Judge may, upon his own motion, reopen any case in which he previously made a decision. 8 C.F.R. § 1003.23(b)(1). *Sua sponte* reopening, however, is an "extraordinary remedy reserved for truly exceptional situations" and is not "a general remedy for any hardships created by enforcement of the time and number limits in the motions regulations." *Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999); *see also Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). The term "exceptional circumstances" refers to exceptional circumstances beyond the alien's control such as battery or extreme cruelty to the alien or any child or parent, serious illness of the alien, or serious illness or death of the alien's spouse, child, or parent, but not including less compelling circumstances. INA § 240(e)(1). In any given case, the Court must look at the totality of circumstances to determine whether exceptional circumstances are present. *See Matter of W-F-*, 21 I&N Dec. 503, 509 (BIA 1996) (citing H.R. CONF. REP. NO. 955, 101st Cong., 2d Sess. 132 (1990)).

The respondents, through counsel, argue that “[l]ack of notice of a court hearing despite diligent efforts to comply with the requirements of the immigration legal process is an exceptional situation as is the risk of being deported to Northern Triangle countries where the risk of death is very real, especially for someone with a credible fear determination.” Lead Respondent’s Motion to Reopen Proceedings and Rescind *In Absentia* Removal Order at 7; Minor Respondent’s Motion to Reopen Proceedings and Rescind *In Absentia* Removal Order at 7. As noted above, the Court finds that the respondent failed to demonstrate that the alleged lack of notice was through no fault of her own. *See* Section II, Part A. Therefore, the Court finds that the situation presented does not rise to the level of exceptional circumstances under section 240(e)(1) of the Act. Thus, the Court declines to *sua sponte* reopen the respondents’ removal proceedings.

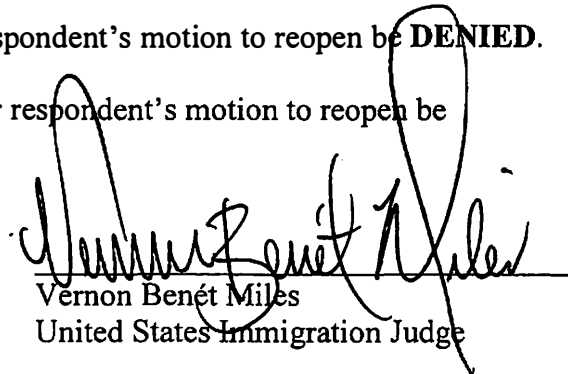
Accordingly, the following orders are hereby entered:

ORDERS

IT IS HEREBY ORDERED that the lead respondent’s motion to reopen be **DENIED**.

IT IS FURTHER ORDERED that the minor respondent’s motion to reopen be **DENIED**.

Date: June 21st, 2016


Vernon Benet Miles
United States Immigration Judge

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Attachments: [] EOIR-33 [] EOIR-28
[] Legal Services List [] Other