U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: RAMIREZ JAVIER, JENY SUYAPA **A 208-994-100**
Riders: [redacted]

Date of this notice: 12/20/2017

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.
Grant, Edward R.
Mann, Ana

Userteam: Docket

Files: A208 994 100 – Los Angeles, CA [redacted]

Date: DEC 20 2017

In re: Jeny Suyapa RAMIREZ-JAVIER [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Valerie Curtis-Diop, Esquire

APPLICATION: Reopening

The respondents, natives and citizens of Honduras, appeal from the Immigration Judge's decision dated June 7, 2017, which denied their motion to reopen and rescind the in absentia order of removal entered on January 9, 2017.[1] The Department of Homeland Security (DHS) has not filed a response to the appeal. The appeal will be sustained.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

Pursuant to section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C), an in absentia removal order may be rescinded upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in accordance with sections 239(a)(1) or (2) of the Act, 8 U.S.C. § 1229(a)(1) or (2). Section 240(b)(5)(C)(ii) of the Act; *Matter of Guzman*, 22 I&N Dec. 722, 722-23 (BIA 1999).

On appeal, the respondent argues that because the Notice to Appear (NTA) was not served on the Immigration Court until December 14, 2016, she was not able to update her address with the Immigration Court (Respondent's Br. at 2-4). The respondent contends that she reported her address change to an immigration officer at the DHS office in Los Angeles, California, on June 1, 2016, but the Immigration Court mailed the Notice of Hearing to her prior address and she did not receive it (Respondent's Br. at 2-4; Respondent's Motion to Reopen at Exhibit C).

The DHS personally served the respondent's and her daughter's NTAs on the respondent on May 20, 2016 and May 21, 2016 (Exhs. 1A, 1B). The respondent's NTA indicates that her address was the South Texas Family Residential Center. The Notice to EOIR: Alien Address, dated May 22, 2016, indicates that the respondent was released and her contact address at that time was [redacted] S. New Hampshire Ave., Los Angeles, CA. The NTA was filed with the Los Angeles

[1] The respondents in this case consist of the lead respondent and her child. References to the singular respondent refer to the lead respondent.

Immigration Court on December 14, 2016. On December 19, 2016, the Immigration Court mailed the Notice of Hearing to the respondent at the address she provided to DHS as reflected on the Notice to EOIR: Alien Address form. The Notice of Hearing was not returned to the Immigration Court. The respondent did not appear at the hearing and the Immigration Judge ordered her removed in absentia on January 9, 2017.

In her decision, the Immigration Judge referred to the respondent's declaration as self-serving but did not question its veracity (IJ at 3). The respondent stated in her declaration that she reported her change of address (which she identifies on appeal as [redacted] S. Hoover Street, Apt. [redacted] Los Angeles, CA 90044) to an immigration officer on June 1, 2016. This was prior to the filing of the NTA with the Immigration Court, the mailing of the Notice of Hearing, and the hearing on January 9, 2017. She claimed that she never received the Notice of Hearing (Respondent's Motion to Reopen at tab C). *Velasquez-Escovar v. Holder*, 768 F.3d 1000, 1003-4 (9th Cir. 2014) (finding that the Immigration Judge had provided no reason to discount the alien's unrefuted and plausible claim that he had provided a correct address). The DHS did not file a brief in opposition to the respondent's motion to reopen or appeal. Thus, it is undisputed that the respondent provided her new address to the DHS prior to the filing of the NTA in Immigration Court and the mailing of the Notice of Hearing. The respondent also stated that, following the instructions of the DHS officer (who she identified by name), she delivered a Form EOIR-33 (change of address) to the Immigration Court on June 1, 2016. The respondent filed her motion to reopen the in absentia order of removal soon after she learned that the order had been entered.

Given the foregoing, we conclude that the respondent reported her address change in a timely manner to the DHS and to the Immigration Court, and that the Notice of Hearing was not properly served upon her at that address. Consequently, we conclude that the respondent's motion to reopen met the statutory grounds for rescission of her order of removal under section 240(b)(5)(C) of the Act. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained, and the Immigration Judge's decision is vacated. The order of removal entered in absentia, on January 9, 2017, is rescinded.

FURTHER ORDER: The motion to reopen is granted, the proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File Nos.:	**A 208 994 100** [redacted]	)
In the Matter of:		)
	RAMIREZ JAVIER, **Jeny Suyapa,** [redacted] .	) **IN REMOVAL PROCEEDINGS**
Respondents		)

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) (2015) —*aliens present in the United States without being admitted or paroled*

APPLICATION: Respondents' Motion to Reopen

ON BEHALF OF RESPONDENT:
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ON BEHALF OF THE DEPARTMENT:
Assistant Chief Counsel
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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

Jeny Ramirez Javier (lead Respondent) and her one-year-old daughter, Alexa Jimenez Ramirez, are natives and citizens of Honduras. Exhs. 1A, 1B. On May 21, 2016, the U.S. Department of Homeland Security (the Department) personally served lead Respondent with Notices to Appear (NTAs). *Id.* In the NTAs, the Department alleged that Respondents entered the United States at or near Roma, Texas, on or about May 19, 2016, and were not then admitted or paroled after inspection by an immigration officer. *Id.* Accordingly, the Department charged Respondents with inadmissibility pursuant to section 212(a)(6)(A)(i) of the INA. *Id.* Jurisdiction vested and removal proceedings commenced when the Department filed the NTAs with the Court on December 14, 2016. *See* 8 C.F.R. § 1003.14 (2016).

On December 19, 2016, the Court mailed Respondents a Notice of Hearing (NOH), notifying them of their hearing before the Court scheduled for January 9, 2017. The Court

mailed the NOH to Lead Respondent's address of record, "[redacted] S. New Hampshire Ave., Los Angeles, California 90004." On January 9, 2017, Respondents failed to appear for their scheduled hearing. Accordingly, the Court, proceeding *in absentia*, found that the Department established, by clear and convincing evidence, that Respondents were inadmissible and, as a result, ordered them removed to Honduras.

On May 18, 2017, Respondents filed the pending motion to reopen proceedings and to rescind the orders of removal entered *in absentia* on January 9, 2017, arguing that they missed their hearing due to lack of notice.

For the following reasons, the Court denies Respondents' motion to reopen.

II. Law, Analysis, and Findings of the Court

The Court may rescind an *in absentia* removal order upon a motion to reopen filed at any time if the respondent demonstrates that he did not receive proper notice. INA § 240(b)(5)(C)(ii); *see also* 8 C.F.R. § 1003.23(b)(4)(ii). A respondent receives proper notice of a proceeding if written notice is given to him in person or sent by mail at the most recent address the respondent provided. *See* INA § 239(a)(1), (2); *Matter of G-Y-R,* 23 I&N Dec. 181, 185 (BIA 2001). It is not always necessary that a respondent receive actual notice of the proceeding. *See G-Y-R-*, 23 I&N Dec. at 189. Service by mail is sufficient if there is proof of attempted delivery to the last address provided by the respondent as required under section 239(a)(1)(F) of the INA. INA § 239(c). A respondent can be properly charged with receiving constructive notice, even though he did not personally see the mailed document, if he was informed of his obligation to keep the Court apprised of his address and the NOH is mailed to the last known address of record. *G-Y-R-*, 23 I&N Dec. at 189. The respondent bears the burden of supporting the motion with specific, detailed evidence to corroborate his claim. *See Celis-Castellano v. Ashcroft*, 298 F.3d 888, 890 (9th Cir. 2002).

In the present matter, lead Respondent was served with NTAs in person on May 19, 2016. Exhs. 1A, 1B. Upon personal service of the NTAs, lead Respondent was on notice of her obligation to provide a contact address and to update the Court of any address changes. *See* INA § 239(a)(1)(F). Upon release from custody, lead Respondent indicated that they would reside at "[redacted] S. New Hampshire Ave., Los Angeles, California 90004." *See* Exhs. 1A, 1B. The Court sent Respondents the NOH by regular mail to that address on December 19, 2016

In cases where an NOH is sent through regular mail, a presumption of delivery exists; however, it is a lesser presumption than applies to correspondence sent by certified mail. *Salta v. INS*, 314 F.3d 1076, 1079 (9th Cir. 2003); *Sembiring v. Gonzales*, 499 F.3d 981, 983 (9th Cir. 2007). To overcome the presumption of delivery, a respondent must submit sufficient evidence to support his claim that he did not receive notice. *See Salta*, 314 F.3d at 1079, *Matter of M-R-A-*, 24 I&N Dec. 665, 673–74 (BIA 2008). The Court may consider a variety of factors, including but not limited to: "(1) the respondent's affidavit; (2) affidavits from family members or other individuals who are knowledgeable about the facts relevant to whether notice was received; (3) the respondent's actions upon learning of the *in absentia* order, and whether due diligence was exercised in seeking to redress the situation; (4) any prior affirmative application

for relief, indicating that the respondent had an incentive to appear; (5) any prior application for relief filed with the Immigration Court or any *prima facie* evidence in the record or the respondent's motion of statutory eligibility for relief, indicating that the respondent had an incentive to appear; (6) the respondent's previous attendance at Immigration Court hearings, if applicable; and (7) any other circumstances or evidence indicating possible non-receipt of notice." *M-R-A-*, 24 I&N Dec. at 674. Each case must be evaluated based on its own particular circumstances and evidence. *Id.*

Here, lead Respondent claims that she never received notice of a court date and time because she moved and thus did not appear for her initial hearing. Moreover, Respondent goes on to state that she advised DHS of her new address and followed their instructions but because the NTAs had not yet been served on the Court she was unable to updated the Court with her new address. *See* Resp't's Mot. Exhibit 2. Nonetheless, lead Respondent has failed to meet any of the above requirements to allege lack of notice. Lead Respondent claims that she followed the directions of the ISAP officer regarding her change of address requirements *Id.* The Court notes however that the Department is not required to inform Respondents of their requirement to keep the Court advised of any address change and that this information is instead on the NTA. *See* INA § 239(a)(1), (c). Secondly, although Lead Respondent disputes the accuracy of the address where the NTA was mailed, there is no indication that the hearing notices were not received at the household as required. Lastly, and most importantly Respondent provided no evidence that she advised DHS of her new address and that they improperly provided the wrong address to the Court. The only evidence submitted in support of this claim is Respondent's self-serving declaration. She has failed to provide any easily obtainable independent evidence that she notified anyone with DHS of her new address such as a date/time stamp copy of the EOIR-33 she allegedly filed with the Chief Counsel's office; any document from the ISAP office showing that she changed her address with them on June 1, 2016 as alleged; or any document from the DHS A-file that would indicate an update of her address. As such, lead Respondent's lack of evidence is insufficient to support her lack of notice claim. The Court therefore finds that Respondents received constructive notice of their scheduled hearing and denies the motion on that basis. INA § 240(b)(5)(C)(ii); *G-Y-R-*, 23 I&N Dec. at 189; 8 C.F.R. § 1003.23(b)(4)(ii).

Accordingly, the Court shall enter the following order:

ORDER

IT IS HEREBY ORDERED that Respondents' motion to reopen be **DENIED**.

Dated: June 7, 2017

TARA NASELOW-NAHAS
Immigration Judge