



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Irving, TX 75062-2324**

**Name: DYOOK, BILAL HASSAN**

**A 076-305-737**

**Date of this notice: 7/22/2015**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Grant, Edward R.  
Guendelsberger, John  
Holiona, Hope Malia

Userteam: Docket

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Falls Church, Virginia 20530

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File: A076 305 737 – Dallas, TX

Date: JUL 22 2015

In re: BILAL HASSAN DYOOK

IN REMOVAL PROCEEDINGS

APPEAL

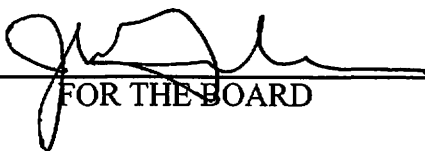
ON BEHALF OF RESPONDENT: Brenda J. DeArmas-Ricci, Esquire

APPLICATION: Reopening

The respondent appeals the Immigration Judge's May 8, 2014, decision denying the respondent's and the Department of Homeland Security's joint motion to reopen and terminate proceedings without prejudice to allow the respondent to pursue prosecutorial discretion and adjustment of status. We will sustain the appeal, grant the motion to reopen, and terminate proceedings without prejudice.

In view of the parties' agreement, reopening of the proceedings is warranted. *See Matter of Yewondwosen*, 21 I&N Dec. 1025, 1026 (BIA 1997) (discussing the important role the parties play in the proceedings and noting that "their agreement on an issue or proper course of action should, in most instances, be determinative"). The rescission standards do not need to be met to reopen proceedings in order to pursue new relief. *See Matter of M-S-*, 22 I&N Dec. 349 (BIA 1998). Moreover, any issue of untimeliness is cured because the motion to reopen proceedings was agreed upon by the parties and jointly filed. 8 C.F.R. § 1003.23(b)(4)(iv).

ORDER: The appeal is sustained, proceedings are reopened and terminated without prejudice and the record is returned to the Immigration Court without further action.

  
\_\_\_\_\_  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
DALLAS, TEXAS

BRENDA J. DEARMAS RICCI  
ATTORNEY AT LAW  
400 POYDRAS ST., SUITE 2375  
NEW ORLEANS, LA 70130

IN THE MATTER OF  
DYOOK, BILAL HASSAN

FILE A: 076-305-737

DATE: MAY 13, 2014

\_\_\_ UNABLE TO FORWARD – NO ADDRESS PROVIDED

X  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 20530

\_\_\_ 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 242 (c) (3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 C.F.R. SECTION 1229A(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT  
1100 COMMERCE STREET, ROOM 1060  
DALLAS, TEXAS 75242

\_\_\_ OTHER:

\_\_\_\_\_  
BB  
COURT CLERK  
IMMIGRATION COURT

CC: OFFICE OF THE CHIEF COUNSEL  
125 EAST JOHN CARPENTER FREEWAY, STE 500  
IRVING, TEXAS 75062

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
DALLAS, TEXAS**

**IN THE MATTER OF:** )  
 )  
**DYOOK, Bilal Hassan** ) **IN REMOVAL PROCEEDINGS**  
 )  
**RESPONDENT** ) **A 076-305-737**

**CHARGE:** Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

**APPLICATION:** Joint Motion to Reopen and Dismiss Proceedings Without Prejudice

**ON BEHALF OF THE RESPONDENT:**

Brenda J. DeArmas-Ricci, Esq.  
Law Off. of Brenda J. DeArmas-Ricci  
400 Poydras Street, Ste. 2375  
New Orleans, LA 70130

**ON BEHALF OF THE DEPARTMENT  
OF HOMELAND SECURITY:**

Paul B. Hunker III, Esq.  
Chief Counsel- DHS/ICE  
125 E. John Carpenter Freeway, Ste. 500  
Irving, TX 75062

**WRITTEN DECISION OF THE IMMIGRATION JUDGE**

**FACTUAL AND PROCEDURAL HISTORY**

The Respondent is a native and citizen of Kuwait. Exhibit 1. He entered the United States at or near Laredo, Texas on or about January 1, 1991. *Id.* The Respondent was not then admitted or paroled after inspection by an immigration officer. *Id.* Consequently, on June 19, 1998, the former Immigration and Naturalization Service (INS or Government) issued the Respondent a Notice to Appear (NTA) charging him with removability pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA or Act). *Id.*

The Dallas Immigration Court mailed the Respondent a Notice of Hearing (NOH) on January 23, 2001 setting the Respondent's case for April 9, 2001. The NOH was returned to the Court by the United States Postal Service as undeliverable. *See* Exhibit 3.

The Respondent failed to appear for his April 9, 2001 hearing and proceedings were conducted *in absentia*. The Government submitted Form I-213 in support of the charge of removal. *See* Exhibit 4. Based on the evidence of record, the Court found the Respondent removable as charged. *See* 8 C.F.R. § 1240.8(c). The Court designated Kuwait as the Respondent's country of removal and ordered him removed *in absentia*.

On March 12, 2014, the Respondent filed a Motion to Reopen and Dismiss Proceedings without Prejudice. The Government has joined in the motion.

## STATEMENT OF LAW & ANALYSIS

### A. Jurisdiction

Generally, a motion to reopen must be accompanied with the appropriate filing fee and fee receipt. 8 C.F.R. §§ 1003.23(b)(1)(ii), 1003.24(b). Though the Respondent's motion does not include evidence that a filing fee has been paid, because this motion is a joint motion, no filing fee is required. *See* 8 C.F.R. § 1003.24(b)(2)(vii). As such, this Court has jurisdiction over this motion.

### B. Timeliness

A motion to reopen must be filed within 90 days of a court's entry of an order of removal. 8 C.F.R. § 1003.23(b)(1). An *in absentia* order may be rescinded upon the filing of a motion to reopen filed within 180 days after the date of an order of removal if the respondent demonstrates that the failure to appear was based on exceptional circumstances. INA § 240(b)(5)(C)(i). In addition, an *in absentia* order may also be rescinded upon the filing of a

motion to reopen filed at any time if the respondent demonstrates lack of notice. INA § 240(b)(5)(C)(i).

The Respondent has not indicated that he is filing the motion based on lack of notice or exceptional circumstances. As such, the Respondent must demonstrate that he has filed the motion within 90 days of the order of removal. *See* 8 C.F.R. § 1003.23(b)(1). The Respondent was ordered removed *in absentia* on April 9, 2001. The Respondent filed the present motion on March 12, 2014. Generally, such a late filing would be untimely; however, because the present motion has been jointly filed by the Government and the Respondent, this limitation does not apply. *See* 8 C.F.R. § 1003.23(b)(4)(iv). Thus, the Court finds the Respondent's motion timely.

### **C. Merits of Reopening**

The Respondent is subject to an *in absentia* order of removal. The Respondent cites *Matter of M-S-*, 22 I&N Dec. 349 (BIA 1998) for the proposition that an individual who is subject to an *in absentia* removal order is not required to rescind the removal order before seeking reopening, and thus is not required to demonstrate lack of notice or exceptional circumstances for failure to appear. *See* Motion to Reopen, pg. 2. This misconstrues the holding of *Matter of M-S-*. The Board found in *Matter of M-S-*, that the requirements for rescission of an *in absentia* order are inapplicable to a motion to reopen that does not seek rescission of that order. 22 I&N Dec. at 355; *see also* *Matter of J-G-*, 26 I&N Dec. 161 (BIA 2013) (discussing difference between motion to reopen to rescind and motion to reopen to seek new relief). However, the Respondent's motion explicitly requests that "the 'in absentia' order be rescinded," not merely that the Court reopen the proceedings to allow the Respondent to pursue new relief. *See* Motion to Reopen, pg. 2. Thus, *Matter of M-S-* would not apply, and the Respondent is required to demonstrate a basis for rescission of that order. In order to rescind an *in absentia*

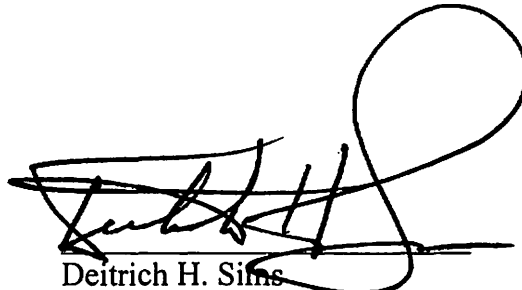
order of removal, the Respondent must show lack of notice or exceptional circumstances leading to his failure to appear. INA § 240(b)(5). The Respondent has not presented any evidence that he did not receive proper notice of his hearing or failed to attend due to exceptional circumstances.

Accordingly, the following Order will be entered:

**ORDER**

**IT IS HEREBY ORDERED** that the Respondent's Joint Motion to Reopen and Dismiss Without Prejudice is **DENIED**.

Date: 5/8/14  
Dallas, Texas



Deitrich H. Sims  
Immigration Judge