U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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DHS/ICE Office of Chief Counsel - ORL
3535 Lawton Road, Suite 100
Orlando, FL 32803

Name: ZAMORANO-MENDEZ, RAMON **A 205-656-586**

Date of this notice: 7/17/2015

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

Userteam: Docket

File: A205 656 586 – Orlando, FL

Date: JUL 17 2015

In re: RAMON ZAMORANO-MENDEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Aniefiok E. Bassey, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, was ordered removed in absentia on August 29, 2013. On April 7, 2014, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on April 15, 2014. The respondent filed a timely appeal of that decision. The case will be remanded.

The record reflects that the Notice of Hearing (NOH) was sent to the respondent at 4953 Holloway Road, Apt. #6, Plant City, FL 33567, the address he provided while detained. Exh. 2. The post office returned the NOH and indicated that it was undeliverable because there was "no such number." On August 29, 2013, the Immigration Judge ordered the respondent removed in absentia and the order was mailed to the respondent at the above address; however, there is no indication that the order was returned by the post office as undeliverable.

The respondent argues that he did not receive proper notice for his August 29, 2013, hearing and further contends that he did not move from the address provided to the Court. In view of the apparent confusion surrounding the delivery of the NOH and the respondent's address, we will remand this case in order to allow the respondent the opportunity to provide proof that the above address is a valid address at which he lived at the time the NOH was mailed.

ORDER: The record is remanded for further proceedings consistent with the above order.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3535 LAWTON ROAD, SUITE 200
ORLANDO, FL 32803

ANIEFIOK BASSEY, ESQ.
P.O. BOX 272065
TAMPA, FL 33688

IN THE MATTER OF
ZAMORANO MENDEZ, RAMON

FILE A205-656-586

DATE: April 15, 2014

___ 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 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 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
3535 LAWTON ROAD, SUITE 200
ORLANDO, FL 32803

__✓__ OTHER: IJ ORDER

COURT CLERK
IMMIGRATION COURT

CC: OFFICE OF THE CHIEF COUNSEL
3535 LAWTON ROAD, SUITE 200
ORLANDO, FL 32803

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
3535 Lawton Road, Suite 200
Orlando, Florida 32803

IN THE MATTER OF: CASE NO.

RAMON ZAMORANO-MENDEZ **A205 656 586**

RESPONDENT IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT: **Aniefiok E. Bassey, Esq.**

ON BEHALF OF DHS: **Kaitlin A. DeStigter, Assistant Chief Counsel**

DECISION ON A MOTION

A **Motion to Reopen** has been filed by Respondent in the above captioned case. The Motion has been duly considered and it appears to the Court that:

[ ] The request is timely and reasonable. Therefore, **IT IS HEREBY ORDERED** the Motion be ***GRANTED***.

[**XX**] The Motion has been duly considered and it appears to the Court that no substantial grounds have been advanced to warrant that it be granted. Therefore, **IT IS HEREBY ORDERED** that the Motion be and the same is hereby ***DENIED***. **The stay of removal is vacated.**

[**XX**] See attached.

DANIEL LIPPMAN
U.S. Immigration Judge

Date Signed: APR 15 2014

Certificate of Service

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [M] ALIEN'S ATTY/REP [X] DHS
DATE: 4/15/14 **BY: COURT STAFF**
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other DL

On April 7, 2014, Respondent filed a motion to reopen this Court's August 29, 2013, in absentia order of removal. The Department of Homeland Security opposes the motion to reopen. On August 29, 2013, this Court entered an in absentia order of removal because Respondent failed to appear for the scheduled removal hearing. The record reflects that on April 11, 2013, Respondent was personally served with the Notice to Appear (NTA), and that on the NTA Respondent was informed he would receive a hearing notice. Respondent's address on the NTA was listed as 4953 Holloway Road, Apt. 6, Plant City, FL 33567. On August 8, 2013, a notice of hearing was sent to Respondent at that address informing him that a removal hearing would be held in Orlando, Florida on August 29, 2013. Respondent did not appear for the hearing on that date and this Court entered an in absentia order of removal against him.

When an alien fails to appear at removal proceedings for which notice was served by mail, as in the instant case, an in absentia order may be entered where the alien has received, or can be charged with receiving, a NTA informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address, pursuant to 239(a)(1)(F) of the Immigration and Nationality Act. *See Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001).

Respondent has not submitted an affidavit in this case. Respondent's partner, in an affidavit, states that Respondent told her that he did not receive notice of the hearing. Respondent does not dispute that the hearing notice was sent to the correct address. The Respondent's partner's affidavit is conclusory in nature and does not overcome the presumption that Respondent received notification of the hearing date. The record reflects that the hearing notice was returned as undeliverable by the post office, but Respondent was under the obligation to provide a correct address. *See Matter of M-R-A-*, 24 I&N Dec. 665, 674-76 (BIA 2008) (setting forth the standards for determining if a respondent has presented sufficient evidence to overcome the weaker presumption of delivery that attaches to notices sent by regular mail); *Matter of C-R-C-*, 24 I&N Dec. 677 (BIA 2008) (holding that the respondent overcame the presumption of delivery by submitting an affidavit as well as circumstantial evidence).

In *Matter of G-Y-R- supra*, the Board determined that when an alien fails to appear at removal proceedings for which notice of the hearing was served by mail, an in absentia order may be entered where the alien has received, or can be charged with receiving, a NTA informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Here, the NTA, containing the requisite address obligations, was served personally on Respondent on April 11, 2013. The NTA contains a Certificate of Service which bears Respondent's signature acknowledging receipt. The NTA informed Respondent of the requirement to notify the Immigration Court immediately by using Form EOIR-33 of any change of address or telephone number during the course of his proceedings. The NTA also advised Respondent that if he did not submit a Form EOIR-33 and did not otherwise provide an address at which he could be reached during proceedings, then the Government shall not be required to provide him with written notice of his hearing.

There is no evidence in the record to suggest, nor does Respondent assert, that he ever submitted a change of address (Form EOIR-33) to the Immigration Court since service of the NTA. Section 240(b)(5)(B) of the Immigration and Nationality Act, states that no written notice shall be required under section 240(b)(5)(A) of the Act if the alien has failed to provide the address required under section 239(a)(1)(F) of the Act. In light of the foregoing, this Court finds that notice of the hearing was properly served.

Respondent abandoned applications for relief when he failed to appear for the scheduled removal hearing. *See generally Matter of W-F-*, 21 I&N Dec. 503, 507 (BIA 1996) (explaining that inherent in any deportation order entered in absentia is a finding that any applications for relief have been abandoned for failure to prosecute).

Absent a showing of inadequate notice, a motion to reopen an in absentia order of removal must be filed within 180 days if the alien demonstrates exceptional circumstances, *see* 8 C.F.R. § 1003.23(b)(4)(ii). Respondent's motion to reopen was untimely filed. Moreover, Respondent has not demonstrated exceptional circumstances for his failure to appear.

This Court will not reopen sua sponte pursuant to 8 C.F.R. § 1003.23(b). "As a general rule, we invoke our sua sponte authority sparingly, treating it not as a general remedy for any hardships created by enforcement of the time and number limits in the motions regulations, but as an extraordinary remedy reserved for truly exceptional situations." *See Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); *see also Matter of Jean*, 23 I&N Dec. 373, 380 n.9 (A.G. 2002); *Matter of J-J-*,21 I&N Dec. 976 (BIA 1997). Respondent has not established a truly exceptional situation.