



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

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125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324**

Name: SIERRA-MANCIA, ONEYDA CAR... A 206-835-344
Riders: [REDACTED]

Date of this notice: 6/17/2016

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:
O'Leary, Brian M.

Printed on: 6/17/2016
User team: Docket

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Falls Church, Virginia 22041

Files [REDACTED] 4 – Dallas, TX

Date:

JUN 17 2016

In re: [REDACTED] ANCIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Gino Mario Mesa, Esquire

APPLICATION: Reopening

The respondents,¹ natives and citizens of Honduras, who were ordered removed from the United States in absentia on September 2, 2014, appeal the decision of the Immigration Judge, dated February 25, 2016, denying the motion to reopen, which was filed on February 22, 2016.

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

Considering the totality of the circumstances presented in this case, we conclude that an exceptional situation has been demonstrated warranting reopening to allow the respondents another opportunity to apply for relief from removal. See 8 C.F.R. § 1003.23(b)(1); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). 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 proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings.



FOR THE BOARD

¹ The respondents consist of the lead respondent (A206 835 344), and her minor son ([REDACTED]).

Immigrant & Refugee Appellate Center, LLC | www.irac.net

DATE: Feb 25, 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
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

OTHER: See attached order

DNE
COURT CLERK
IMMIGRATION COURT

CC: ALLUMS, JOHN L.
125 E. HWY 114, STE 500
IRVING, TX, 75062

FF

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

IN THE MATTER OF:

Oneyda Carolina Sierra-Mancia,

RESPONDENTS

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)
)
)
)

IN REMOVAL PROCEEDINGS

A206-835-344 (lead)

ON BEHALF OF THE RESPONDENTS:

Pro Se

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

Office of Chief Counsel, DHS

Order Denying Motion to Reopen

Respondents are an adult and child seeking reopening of removal orders entered in absentia on Sept. 2, 2014. The MTR¹ is based on a theory of lack of notice. The motion is denied.

Respondent was personally served with the Notice to Appear for herself and her child. NTA at 2. Thus, the Respondent was on notice of the initiation of removal proceedings, her obligation to update the immigration court with any change of address, and the consequences of failing to appear as required by Section 239(a)(1) of the Act. *See Matter of G-Y-R*, 23 I&N Dec. 181, 186 (BIA 2001).

At the time of the issuance of the NTA, Respondent provided an address in Dallas. NTA at 1, 2. Subsequently, Respondent moved to Weatherford, Texas, MTR Tab B, and then to

¹ Reference to the MTR filed by the lead Respondent, who is the parent and guardian of the minor Respondent, is deemed a reference also to the MTR filed by the minor Respondent. References herein to the lead Respondent are deemed references to both Respondents. These cases are and always have been consolidated. Since the lead Respondent speaks on behalf of her minor child in these proceedings, the issues are identical in each case. *Accord Matter of Winkens*, 15 I&N Dec. 451 (BIA 1975) (abandonment by parent imputed to child).

Houston, Texas, MTR at 1, but did not notify the Immigration Court of either of her changes of address. Regarding her move to Houston, Respondent states that she assumed one of the officers monitoring her would notify the Immigration Court of her move. MTR at 1. Respondent moved to Houston on August 6, 2014. On August 21, 2014, the Notice of Hearing was sent to her address of record in Dallas, and was not returned as undeliverable. Respondent thereafter failed to appear, and was ordered removed in absentia on Sept. 2, 2014.

The NTA states as follows:

"You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of the this proceeding. You will be provided with a copy of this form. Notices of Hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS."

The NTA also reflects that Respondent was orally advised in Spanish of the place of the hearing and the consequences of not appearing.

Because the Respondent failed to notify the Immigration Court of her change of address, she was not entitled to notice of the hearing, INA section 239(a)(2)(B), and it was reasonable for the Immigration Court to send a notice of hearing to the best available address. *See Matter of G-Y-R*, 23 I&N Dec. 181, 186 (BIA 2001).

Respondent cannot defeat or delay removal proceedings by failing to comply with the statute and the instructions stated on the NTA, and then claiming lack of notice. It was to avoid these kinds of delays that Congress enacted the current statutory scheme. To maintain an orderly docket and avoid even further backlogs in the Court's already overburdened docket, the Court needs for the parties appearing before it to comply with the procedures set forth by Congress and

the Attorney General. Respondent has not been diligent and has not acted with reasonable care toward these proceedings.

ORDER

IT IS HEREBY ORDERED that the Respondent's Motion to Reopen is **DENIED**.

Date: 2-25-16
Dallas, Texas



R. Wayne Kimball
Immigration Judge