



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 20530

Barrow, sarjo, Esq.
The Law Office of Sarjo Barrow, LLC
4710 E. Broadway, Suite 180
Madison, WI 53716

DHS/ICE Office of Chief Counsel - SEA
1000 Second Avenue, Suite 2900
Seattle, WA 98104

Name: JAMMEH, MOHAMMAD

A 205-274-106

Date of this notice: 2/23/2015

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:
Guendelsberger, John
Holmes, David B.
Miller, Neil P.

Userteam: Docket

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www.irac.net/unpublished/index

Handwritten initials



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Falls Church, Virginia 20530

**JAMMEH, MOHAMMAD
A205-274-106
NORTHWEST DETENTION CENTER
1623 E J STREET
TACOMA, WA 98421**

**DHS/ICE Office of Chief Counsel - SEA
1000 Second Avenue, Suite 2900
Seattle, WA 98104**

Name: JAMMEH, MOHAMMAD

A 205-274-106

Date of this notice: 2/23/2015

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John
Holmes, David B.
Miller, Neil P.

User team: [redacted]

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 20530

File: A205 274 106 – Seattle, WA

Date: FEB 23 2015

In re: MOHAMMAD JAMMEH

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sarjo Barrow, Esquire

ON BEHALF OF DHS: Eric Bakken
Senior Attorney

APPLICATION: Motion to reopen

The respondent, a native of Saudi Arabia and citizen of Gambia, has appealed from the Immigration Judge's December 4, 2014, decision denying his motion to reconsider the previously denied motion to reopen after the respondent was order removed in absentia on June 24, 2014. The Department of Homeland Security ("DHS") has filed a brief in opposition to the appeal. Proceedings will be reopened and the record will be remanded to the Immigration Judge for further proceedings.

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. See 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).


In his motion to the Immigration Judge, the respondent argues that he did not receive his Notice of Hearing which resulted in the in absentia order of removal. He notes that the Notice of Hearing, which was sent by regular mail, was not properly addressed to him in that it listed the incorrect zip code.

The Immigration Judge determined that the respondent had not established that the DHS recorded his address incorrectly, rather than that the error was on the part of the respondent in providing his address (I.J. at 1). He therefore determined that the respondent had not established he had not received notice of his hearing. *Id.* Nevertheless, even if we presume that the DHS used the correct address as provided by the respondent, we conclude that the Immigration Judge did not properly consider whether the respondent had overcome the weaker presumption of delivery of the notice when regular mail is used. See *Matter of M-R-A-*, 24 I&N Dec. 665, 674 (BIA 2008) (holding that "an inflexible and rigid application of the presumption of delivery is not appropriate where regular mail is the method of service of a Notice [of Hearing]" and listing factors to be considered in determining whether the respondent has overcome the presumption of delivery). We particularly note that the Immigration Judge did not consider many relevant factors set forth in *Matter of M-R-A-*, *supra*, such as affidavits from family members knowledgeable about the facts relevant to whether notice was received; prima facie evidence in the record of statutory eligibility for relief, indicating that the respondent had an incentive to appear; the respondent's previous actions in learning he was sought by immigration authorities; other circumstances or evidence indicating possible non-receipt of notice. *Id.*

Considering the totality of the circumstances presented in this case, including the record evidence that the respondent entered the United States lawfully and is married to a United States citizen, we find it appropriate to reopen proceedings. We will remand the record to the Immigration Judge to consider the respondent's eligibility for any form of relief from removal that is available to him. Accordingly, the following order will be entered.

ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings and issuance of a new decision consistent with this opinion.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1000 SECOND AVE., SUITE 2500
SEATTLE, WA 98104

The Law Office of Sarjo Barrow, LLC
Barrow, sarjo
4710 E. Broadway
Suite 115
Madison, WI 53716

IN THE MATTER OF
JAMMEH, MOHAMMAD

FILE A 205-274-106

DATE: Dec 8, 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 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 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
1000 SECOND AVE., SUITE 2500
SEATTLE, WA 98104

✓
___ OTHER: SEE ATTACHED ORDER OF THE IMMIGRATION JUDGE
RE: MOTION TO REOPEN

COURT CLERK
IMMIGRATION COURT

CC: ERIC BAKKEN, ICE ASST. CHIEF COUNSEL
1000 SECOND AVE, STE 2900
SEATTLE, WA, 98104

FF

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON

In the Matter of:

Date

Dec. 4, 2014

Jammeh, Mohammed

File Number

A 205 274 106

Respondent

IN REMOVAL PROCEEDINGS

Judge Kenneth Josephson

CHARGE: Failure to comply with conditions of admission

APPLICATION: Motion to Reconsider

ON BEHALF OF RESPONDENT

ON BEHALF OF DHS

Sarjo Barrow, Esq.

Eric Bakken, Esq.

ORDER OF THE IMMIGRATION JUDGE

On Nov. 3, I entered a decision denying an MTR filed by respondent after he failed to appear for his scheduled removal hearing of June 24, 2014. On Nov. 28, he filed a Motion to Reconsider which drew the DHS opposition of Dec. 4. I deny the motion to reconsider. Notwithstanding what has now been counsel representing his client for well over a month, we still have no declaration from the respondent; only statements from counsel. As noted in *Matter of Laureano, 19 I & N Dec. 1, 3 (BIA 1983)* "Statements by counsel are not evidence". Respondent's **counsel's** argument is that DHS took down a wrong digit in the zip code in terms of the address that was used to give notice of hearing; and his client did not receive notice of hearing. However, neither our notice of hearing was returned to us nor was the in absentia order that were sent to the address of record. While there is an affidavit from respondent's sister and wife that accompanies the motion to reconsider reciting that they didn't see any hearing notice (of course it would not have been addressed to them); there is nothing from the respondent himself notwithstanding the passage of such an additional significant period of time. Additionally the affidavits from the alleged USC spouse and the sister make no assertion that they were present when the respondent, again according to **counsel**, supposedly gave a different zip code to the apprehending officer. While the wife claims to have "filed" a form I 130 why has she not provided a copy of the same along with her "money order" (para. 5) together with say a certificate of mailing even if she has not received her I 797? I agree with DHS that at this point, this respondent has still not demonstrated any prima facie basis to any entitlement to relief nor that he did not fail to receive notice of hearing.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY ☒ (MAIL) ☐ (M)

PERSONAL SERVICE (P)

TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer

☒ ALIEN's ATT / REP ☒ ICE - Chief Counsel

DATE: 12-4-14 BY: COURT STAFF pn

Attachments: ☐ EOIR-33 ☐ EOIR-28

☐ Legal Services List ☐ Other

Kenneth Josephson
Kenneth Josephson