



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: CHAVEZ TREJO, HERIBERTO

A 215-573-855

Date of this notice: 9/28/2020

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:
Liebowitz, Ellen C

ENCLOSURE

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A215-573-855 – Denver, CO

Date: **SEP 28 2020**

In re: Heriberto CHAVEZ TREJO

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Ian C. McKinley, Esquire

ON BEHALF OF DHS: Wayne B. Paugh
Assistant Chief Counsel

APPLICATION: Reopening; rescission of in absentia removal order; remand

The respondent, whom the Department of Homeland Security (DHS) claims is a native and citizen of Mexico, has appealed from the Immigration Judge's August 21, 2019, decision which denied his motion to reopen his removal proceedings and rescind the in absentia order of removal that had been entered against him on June 27, 2019. He also filed a motion to reconsider the Immigration Judge's August 21, 2019, decision, which was still pending at the time he filed the instant appeal. We therefore construe the motion to reconsider (which is supported by additional evidence) as a motion to remand. The DHS has submitted responses in opposition to the appeal and the motion. The record will be remanded to the Immigration Judge for further action or proceedings and for the entry of a new order.

The respondent claims that he is a United States citizen due to his birth in New Mexico. The respondent's claim to United States citizenship raises a jurisdictional issue. *See generally Matter of Cantu*, 17 I&N Dec. 190, 194 (A.G. 1978) ("Alienage is jurisdictional."). The respondent's motion to remand is supported by substantial circumstantial evidence supporting his claim that he was born in New Mexico (*see* Motion to Reconsider at Attachments A-B). Considering the particular circumstances presented by the respondent on appeal and in his motion to remand, and the limitations on our authority to engage in fact-finding on appeal, we will remand the record for the Immigration Judge to evaluate the motion to reconsider and additional evidence in the first instance and assess whether reopening of the respondent's removal proceedings is warranted. *See* 8 C.F.R. §§ 1003.1(d)(3)(i), (iv), 1003.23(b)(1), (4)(ii). Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further action or proceedings and for the entry of a new order.


FOR THE BOARD