



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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Newark, NJ 07105-0000**

**DHS/ICE Office of Chief Counsel - NEW
P.O. Box 1898
Newark, NJ 07101**

Name: SCARANNI, ANA MARIA

A 089-118-049

Date of this notice: 8/13/2013

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:
Manuel, Elise
Miller, Neil P.
Guendelsberger, John

TranC
Userteam: Docket

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VS

**U.S. Department of Justice
Executive Office for Immigration Review**

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A089 118 049 – Newark, NJ

Date:

AUG 13 2013

In re: ANA MARIA SCARANNI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Moses Apsan, Esquire

The respondent, a native and citizen of Brazil, was ordered removed in absentia on June 4, 2010. On April 11, 2012, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on July 6, 2012. The respondent filed a timely appeal of that decision. The appeal will be sustained, proceedings will be reopened and the record will be remanded.

The Immigration Judge denied the respondent's motion to reopen finding that she failed to establish exceptional circumstances for her failure to appear at the hearing. However, upon review, we find that the totality of circumstances presented in this case constitute exceptional circumstances for the respondent's failure to appear at her hearing. Section 240(e)(1) of the Act; 8 U.S.C. § 1229(e)(1). Accordingly, we will allow the respondent another opportunity to appear for a hearing.

ORDER: The appeal is sustained, the in absentia order is rescinded, the proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.



FOR THE BOARD

Immigrant & Refugee Appellate Center | www.irac.net



U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court, Newark, New Jersey

*Rodino Federal Building
970 Broad Street, Room 1200
Newark, New Jersey 07102
973/645-3524*

July 6, 2012

IN THE MATTER OF:

SCARANNI, Ana Maria

CASE NO. A089 118 049

RESPONDENT.

IN REMOVAL PROCEEDINGS
AT NEWARK, NEW JERSEY

DECISION ON RESPONDENT'S MOTION TO REOPEN

Respondent filed, on June 21, 2012, a Motion to Reopen along with appropriate filing fee to rectify the lack of fee payment for her Motion to Reopen filed on April 11, 2012. On June 4, 2010, the undersigned signed an order of removal after Respondent failed to appear for a scheduled hearing. Respondent filed a first motion without fee; the DHS filed an opposition to the first motion that the court will consider in making this decision, as per its request. The court has considered both Motions to Reopen filed by Respondent in coming to a decision in this matter.

Sympathetic Facts

Respondent, who is over 60 years of age, claims to have been abandoned by her husband after her husband defrauded others. Respondent claims to have no knowledge about her husband's criminal conduct and claims to have no idea of where he might be.

Respondent claims to have three adult children living in this country and filed evidence that one daughter, a citizen of the United States, has filed a Visa Petition on

Respondent's behalf that has been approved by US CIS. Respondent lives with her adult son and his family, and her son is a Lawful Permanent Resident of this country.

Respondent claims to be close with her grandchildren, who she babysits. The court has no evidence about whether Respondent works and pays taxes or whether the parents pay Respondent for her work. Respondent claims to need psychiatric medications, but presents no evidence from her psychiatrist about it.

The Motion is Untimely

Respondent did receive proper notice of the date, place, and time of the hearing held in her absence. Respondent and her daughter have explained that her daughter did receive Respondent's proper written notice from this court of the Respondent's scheduled hearing. Respondent had given her daughter's address to this court as the address to use for all notices, yet Respondent's daughter failed to give the notices to her mother until after the hearing was held. But the notices were delivered to the Respondent in 2010, both Respondent and her daughter admit.

Therefore, Respondent must prove that there was an exceptional circumstance that prevented her from attending the hearing held in her absence. Meanwhile, nothing was done to file a Motion to Reopen. Instead, in October, 2011, Respondent's daughter filed a Visa Petition on her mother's behalf that makes clear that DHS had placed Respondent under some sort of supervision throughout this time.

It was required that Respondent file her Motion to Reopen within 180 days of the hearing held. The motion is untimely and no reasonable explanation has been provided as to why. There is also no evidence that the 180-day filing deadline is tolled for any reason.

Respondent Was Not Diligent About Filing the Motion to Reopen

In addition, Respondent has not demonstrated diligence in making her motion to reopen; despite having realized that she failed to come to court in 2010, Respondent waited years to file her Motion to Reopen with this court and essentially admits that what motivated her to approach the court is that she was detained by DHS, so made aware that she needed to take some action in this matter.

Insufficient Evidence of *Prima Facie* Eligibility for Relief.

Finally, Respondent fails to attach a Form I-485 to make it plain that she is statutorily eligible to apply to adjust her status under Section 245 of the Immigration and Nationality Act. The court is unable to determine whether Respondent has ever been the subject of criminal charges. The court cannot determine whether Respondent divorced the husband that she says abandoned her without warning. Claims about being on psychiatric medications are made without support in the record. This court has insufficient evidence to convince it to reopen proceedings *sua sponte*.

ORDER

IT IS ORDERED that Respondent's Motion to Reopen is DENIED. This court's decision signed on June 4, 2010 remains in full force and effect.

SIGNED on the date indicated above.


ANNIE S. GARCY, Immigration Judge