



**U.S. Department of Justice**

Executive Office for Immigration Review

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**SEMRAU, LORNE ALLAN  
40 LEEPER LANE  
JACKSON, TN 38301**

**DHS/ICE Office of Chief Counsel - MEM  
80 Monroe Ave., Ste 502  
Memphis, TN 38102**

**Name: SEMRAU, LORNE ALLAN**

**A 022-201-177**

**Date of this notice: 4/19/2017**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby  
Acting Chief Clerk

Enclosure

Panel Members:  
Adkins-Blanch, Charles K.  
Grant, Edward R.  
Mann, Ana

Userteam: Docket

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Falls Church, Virginia 22041

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File: A022 201 177 – Memphis, TN

Date: APR 19 2017

In re: LORNE ALLAN SEMRAU a.k.a. Lorne Allen Semrau

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The respondent appeals from the Immigration Judge's April 14, 2016, decision denying his motion to reopen. The respondent was ordered removed in absentia on March 3, 2016. The appeal will be sustained, the proceedings reopened, and the record remanded.

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

The record reflects that the respondent received in-person notice of a hearing scheduled for March 3, 2016, at the Immigration Court located at 167 N. Main Street, Memphis, TN. Written notice was also sent to the respondent's address of record. However, the respondent subsequently moved to a new address. It is not clear whether the respondent submitted a change of address to the Immigration Court. When the respondent did not appear for the March 3, 2016, an in absentia order of removal was entered and a copy was sent to the respondent's prior address. The respondent filed a timely motion to reopen which candidly admitted that he had recorded the wrong hearing date but also argued that he did not receive proper notice of the hearing. The Immigration Judge denied the motion, finding that the respondent had received actual notice of the March 3, 2016, hearing when he had last appeared pro se in Immigration Court on October 23, 2014.

The record shows that prior to the scheduled March 3, 2016, hearing, the Immigration Court itself moved to a new address: 80 Monroe Avenue, Memphis, TN. An alien generally must be provided with written notice when there is a change in the place of proceedings. *See* section 239(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(2)(A). No such notice is required if the alien has failed to provide a written record of an address at which he or she may be contacted respecting the proceedings. In this case, however, it is not clear when the respondent moved to his current address, or if any attempt was made to advise the respondent of the new hearing location. Under the circumstances, we are not confident that the exception to notice of a change in the location of proceedings is applicable, and we therefore cannot conclude that notice of the hearing location was appropriate. Resolving all doubts in the respondent's favor in order to ensure due process, we will rescind the in absentia order and reinstate proceedings.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained and the Immigration Judge's order of removal is vacated.

FURTHER ORDER: The proceedings are reinstated.

FURTHER ORDER: The record is remanded for further proceedings.

A handwritten signature in black ink, consisting of several loops and flourishes, positioned above a horizontal line.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
80 MONROE AVE., SUITE 501  
MEMPHIS, TN 38103

SEMRAU, LORNE ALLAN  
40 LEEPER LANE  
JACKSON, TN 38301

IN THE MATTER OF  
SEMRAU, LORNE ALLAN  
21631-076

FILE A 022-201-177

DATE: Apr 14, 2016

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— 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:

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IMMIGRATION COURT  
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CC: DHS/OFFICE OF THE PRINCIPAL LEGAL ADVISOR  
80 Monroe Ave, Suite 502  
Memphis, TN, 38103

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
MEMPHIS, TENNESSEE

IN THE MATTER OF

SEMRAU, Lorne Allan  
aka SEMRAU, Lorne Allen

Respondent

IN REMOVAL PROCEEDINGS

FILE NO.: A022-201-177

DATE: April 14, 2016

**CHARGE:**

Section 237(a)(2)(A)(iii) of the Act, in that, at any time after admission, you have been convicted of an aggravated felony as defined in section 101(a)(43)(M) of the Act, a law relating to an offense that involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000

**APPLICATION:**

Motion to Reopen

**ON BEHALF OF RESPONDENT:**

*Pro Se*

**ON BEHALF OF DHS:**

Jonathan M. Larcomb  
Assistant Chief Counsel  
80 Monroe Avenue, Suite 502  
Memphis, TN 38103

**DECISION OF IMMIGRATION JUDGE**

**I. PROCEDURAL HISTORY**

Lorne Allan Semrau ("Respondent"), a native and citizen of Canada, was admitted into the United States at Chicago, Illinois on or about January 2, 1978 as a non-immigrant student. Exh. 1. On January 8, 1979, Respondent adjusted status to that of lawful permanent resident under § 245 of the Immigration and Nationality Act ("INA" or "the Act"). *Id.*

On March 24, 2011, Respondent was convicted in the United States District Court for the Western District of Tennessee on charges of health care fraud and aiding and abetting, for which he was ordered to pay restitution in the amount of \$245,435.86. *Id.*

The Department of Homeland Security ("the Department") initiated the present removal proceedings against Respondent on November 23, 2013, alleging that he is removable from the United States pursuant to § 237(a)(2)(A)(iii) of the Act. *Id.* Respondent was personally served

with a notice to appear on or about November 18, 2013, scheduling his case for a date and location to be set. *Id.*

Respondent filed a Motion to Terminate Proceedings for Violation of the *Accardi* Doctrine with the Oakdale, Louisiana Immigration Court on September 8, 2013. Exh. 3. On November 25, 2013, Respondent was served via mail with a notice of hearing for a December 18, 2013 video hearing. On December 10, 2013, Respondent was mailed a notice of hearing that rescheduled his video hearing for January 15, 2014. The Department filed its opposition to Respondent's Motion to Terminate on December 17, 2013. Exh. 4. The Oakdale Immigration Court denied Respondent's Motion to Terminate on January 2, 2014. Exh. 5.

On January 10, 2014, the Department moved for administrative closure of Respondent's proceedings because he was no longer in the Department's custody. Exh. 6. The Oakdale Immigration Court granted the Motion on January 14, 2014. Exh. 7. The Department reinitiated proceedings against Respondent on June 4, 2014 by filing a Motion to Recalendar and a Motion to Change Venue with the Oakdale Immigration Court. Exh. 8. The Department's Motion to Change Venue requested that the proceedings be transferred to the Memphis Immigration Court because Respondent now lived in Jackson, Tennessee. *Id.* The Oakdale Immigration Court granted both motions, scheduling Respondent's Master Calendar hearing for October 23, 2014 and transferring the matter to the jurisdiction of this Court. Exhs. 9, 10.

Respondent appeared *pro se* at his October 23, 2014 Master Calendar hearing before this Court. At the hearing, the Court notified Respondent that his Master Calendar hearing was reset for March 3, 2016, and that he may be removed *in absentia* if he failed to appear at such hearing. Respondent was also personally served with written notice of the March 3, 2016 Master Calendar hearing. Exh. 11. Respondent failed to appear at his March 3, 2016 Master Calendar hearing and the Court ordered him removed *in absentia*.

On March 31, 2016, Respondent filed a letter with the Court, which the Court has interpreted as a motion to reopen his *in absentia* order of removal, alleging he did not receive notice of his March 3, 2016 Master Calendar hearing. The Department filed its response with the Court on April 6, 2016, opposing Respondent's Motion. The Court now issues this decision.

## II. DISCUSSION

According to the INA, as well as federal regulations, an order of removal entered *in absentia* pursuant to INA § 240(b)(5)(A) may be rescinded upon a motion to reopen filed in only one of the following ways: (i) within 180 days after the date of the order of removal if the alien shows that the failure to appear was due to exceptional circumstances, or (ii) at any time if the alien demonstrates that he or she did not receive notice in accordance with INA § 239(a)(1) or (a)(2). INA § 240(b)(5)(C); 8 C.F.R. §1003.23(b)(4)(ii) (2016). Furthermore, the filing of said motion shall stay the removal of the alien pending disposition of the motion by the Immigration Judge. INA § 240(b)(5)(C); 8 C.F.R. §1003.23(b)(4)(ii). An alien may file only one such motion to reopen. 8 C.F.R. §1003.23(b)(4)(ii).

Respondent filed his Motion to Reopen based upon a claim that he “did not receive a Notice to Appear” for the March 3, 2016 hearing. Respondent’s Motion to Reopen at 1. According to §1003.23(b)(4)(ii), Respondent can file a Motion to Reopen based on lack of notice at any time. Consequently, Respondent’s Motion to Reopen is timely. Respondent must therefore demonstrate that he did not receive notice in accordance with INA § 239(a). *See* INA § 240(b)(5)(C)(ii); *see also* 8 C.F.R. § 1003.23(b)(4)(ii) (2016).

Section 239(a) of the INA provides that in removal proceedings the notice to appear and all notices of hearing “shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any) . . .” INA § 239(a). Service by mail is sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with INA § 239(a)(1)(F). When written notice is properly addressed and mailed to an alien via regular mail, a presumption of delivery arises. *Matter of M-R-A-*, 24 I&N Dec. 665, 673 (BIA 2008). Once a presumption of delivery has arisen, the burden is on the alien to show proof to rebut the presumption of delivery. *Id.* at 674.


Personal service was practicable in this case, and at Respondent’s October 23, 2014 hearing, the Court personally served Respondent with a Notice of Hearing for his March 3, 2016 Master Calendar hearing. Exh. 11. Respondent alleges he “mistakenly recorded the hearing as to be in April, 2016.” Respondent’s Motion to Reopen at 1. Thus, Respondent concedes he was notified of his Master Calendar hearing in 2016.

A party seeking reopening bears a “heavy burden,” as motions to reopen are disfavored. *Alizoti v. Gonzales*, 477 F.3d 448, 451 (6th Cir. 2007) (quoting *Doherty v. INS*, 502 U.S. 314, 323 (1992)). Respondent has failed to meet this burden. Since Respondent received actual notice of his March 3, 2016 Master Calendar hearing, Respondent’s Motion to Reopen must be denied.

### III. CONCLUSION

It is **HEREBY ORDERED** that Respondent’s Motion to Reopen be **DENIED**.

DATED this the 14 day of April 2016.

  
\_\_\_\_\_  
Honorable Rebecca L. Holt  
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
80 MONROE AVE., SUITE 501  
MEMPHIS, TN 38103

SEMRAU, LORNE ALLAN  
33 CHARLESTON SQUARE  
JACKSON, TN 38305

IN THE MATTER OF  
SEMRAU, LORNE ALLAN  
21631-076

FILE A 022-201-177

DATE: Mar 3, 2016

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
MEMPHIS, TENNESSEE

IN THE MATTER OF:  
SEMRAU, LORNE ALLAN

DATE: Mar 3, 2016

CASE NO. A022-201-177

RESPONDENT IN REMOVAL PROCEEDINGS

DECISION

Jurisdiction was established in this matter by the filing of the Notice to Appear issued by the Department of Homeland Security, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. § 1003.14(a), 103.5a.

The respondent was provided written notification of the time, date and location of the respondent's removal hearing. The respondent was also provided a written warning that failure to attend this hearing, for other than exceptional circumstances, would result in the issuance of an order of removal in the respondent's absence provided that removability was established. Despite the written notification provided, the respondent failed to appear at his/her hearing, and no exceptional circumstances were shown for his/her failure to appear. This hearing was, therefore, conducted in absentia pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act.

- [ ] At a prior hearing the respondent admitted the factual allegations in the Notice to Appear and conceded removability. I find removability established as charged.
- [ ✓ ] The Department of Homeland Security submitted documentary evidence relating to the respondent which established the truth of the factual allegations contained in the Notice to Appear. I find removability established as charged.

I further find that the respondent's failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any pending applications and any applications the respondent may have been eligible to file. Those applications are deemed abandoned and denied for lack of prosecution. See Matter of Pearson, 13 I&N Dec. 152 (BIA 1969); Matter of Perez, 19 I&N Dec. 433 (BIA 1987); Matter of R-R, 20 I&N Dec. 547 (BIA 1992).

ORDER: The respondent shall be removed to CANADA or in the alternative to on the charge(s) contained in the Notice to Appear.



REBECCA L. HOLT  
Immigration Judge

cc: Assistant District Counsel  
Attorney for Respondent/Respondent

21