



**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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**DHS/ICE Office of Chief Counsel - CHI  
525 West Van Buren Street  
Chicago, IL 60607**

**Name: VAZQUEZ NINO, MIGUEL**

**A 200-676-857**

**Date of this notice: 7/22/2013**

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  
Guendelsberger, John  
Hoffman, Sharon

yungc  
Userteam: Docket

Immigrant & Refugee Appellate Center | [www.irac.net](http://www.irac.net)

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Falls Church, Virginia 22041

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File: A200 676 857 – Chicago, IL

Date: JUL 22 2013

In re: MIGUEL VAZQUEZ NINO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Constance H. Lara, Esquire

ON BEHALF OF DHS: Kristin Linsley  
Assistant Chief Counsel

APPLICATION: Reopening

The respondent has appealed from the Immigration Judge's decision dated February 14, 2013, denying his motion to reopen. The Immigration Judge had previously ordered the respondent removed in absentia for his failure to appear at the hearing on November 6, 2012. On appeal, the respondent asserts that he did not receive notice of the hearing. The respondent's appeal will be sustained and the record will be 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. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent was personally served with the Notice to Appear on August 7, 2010. A notice of hearing dated July 18, 2011, was mailed to the respondent at the same address reflected in the Notice to Appear, scheduling his removal hearing for November 6, 2012. On October 21, 2011, a second notice of hearing was sent to the respondent at the same address, advising him that the location of his scheduled hearing had changed. However, it was returned to the Immigration Court undelivered.

On appeal and before the Immigration Judge, the respondent asserts that he continuously resided at the address reflected on the Notice to Appear, but did not receive either notice regarding his November 6, 2012, removal hearing. It is undisputed that the respondent did not receive actual notice of the change in place of the removal proceedings, as the second notice of hearing was returned undelivered. Furthermore, the notice was mailed to the correct address, and the respondent cannot be charged with receipt. In light of the foregoing, we conclude that the respondent received insufficient notice of his removal hearing. *See* section 239(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(2)(A); *see also Smykiene v. Holder*, 707 F.3d 785 (7th Cir. 2013). Accordingly, the following order will be entered.

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

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
525 W. VAN BUREN, SUITE 500  
CHICAGO, IL 60607

LARA, CONSTANCE H.  
4843 W. CERMAK RD.  
CICERO, IL 60804

IN THE MATTER OF  
VAZQUEZ NINO, MIGUEL

FILE A 200-676-857

DATE: Feb 15, 2013

\_\_\_ 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  
P.O. BOX 8530  
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  
525 W. VAN BUREN, SUITE 500  
CHICAGO, IL 60607

\_\_\_ OTHER: \_\_\_\_\_

  
\_\_\_\_\_  
COURT CLERK  
IMMIGRATION COURT

CC: KRISTIN MUSTO LINSLEY  
525 W. VAN BUREN  
CHICAGO, IL, 60607

FF

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
CHICAGO, ILLINOIS

File No.: **A200 676 857**

Date: **February 14, 2013**

In the Matter of:

**Miguel VAZQUEZ Nino**

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)  
) IN REMOVAL PROCEEDINGS  
)  
)

CHARGE: **Section 212 (a) (6) (i)** of the Immigration and  
Nationality Act ("INA"), 8 U.S.C. §

APPLICATIONS: Motion to Reopen

ON BEHALF OF THE RESPONDENT:

**Constance H. Lara**  
4843 W. Cermak Rd.  
Cicero, Illinois 60623

ON BEHALF OF THE DHS:

**Kristin Linsley**  
Assistant Chief Counsel  
525 W. Van Buren St.  
Chicago, Illinois 60607

**DECISION OF THE IMMIGRATION JUDGE**

In a Motion to Reopen Proceedings filed with the Court on December 12, 2012, the respondent claimed that he had not received notice of his hearing on November 6, 2012, and therefore, could not appear for it.

The record reflects that the Department of Homeland Security (DHS) personally served the respondent with a Notice to Appear (NTA) on August 7, 2010. Furthermore, the DHS served the respondent when he was detained in Detroit. Before releasing him on his own recognizance, the DHS ascertained his address, namely, 5417 S. Fairfield, Chicago, Illinois 60632, and communicated that information to the Court.

As a result, the Court, on July 18, 2011, sent the respondent a notice that his hearing had been scheduled for November 6, 2012. The Court addressed that notice to the respondent at his South Fairfield, Chicago address. It was


not returned.<sup>1</sup> Once the Court moved to a new location, it sent the respondent a second notice, stating its new address, but reflecting the same date and time of his hearing. Although mailed to the same address as the prior notice, it was returned as undeliverable.

The respondent claims in this Motion and supporting affidavit that he never received any notice and that he has continued to reside at his S. Fairfield, Chicago address since May 2003. Nonetheless, the respondent maintains that he received no notice of his November, 2012 hearing, and became aware that a hearing had been scheduled, only after receiving the IJ's decision, ordering him removed *in absentia*.

Of course, it is only reasonable to expect that someone who is obliged to appear at a court hearing receive notice of it. However, there were two notices in this case, both sent to the same address and indicating the same hearing date. One was received by the respondent and the other returned to the Court. Receipt of the first notice was sufficient to put the respondent on notice of his hearing. Because the respondent was properly notified of his hearing, he was obligated to appear and thus, was properly order removed *in absentia*.

Additionally, this is not a case presenting an issue that there were exceptional circumstances excusing the respondent's nonappearance. From what is know of the circumstances, he was in good health and able to appear in court. Accordingly, the following order is entered.

**ORDER: IT IS ORDERED THAT the Motion to Reopen be (and hereby is DENIED.**

  
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**Craig M. Zerbe**  
**Immigration Judge**

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<sup>1</sup>The Court has a practice of retaining and filing all returned notices and of placing them in alien's ROP.