



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MORALES, BLADIMIR

A 029-376-366

Date of this notice: 7/24/2015

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:
Grant, Edward R.
Guendelsberger, John
Holiona, Hope Malia

Userteam: Docket

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OS

Falls Church, Virginia 20530

File: A029 376 366 – Miami, FL

Date:

JUL 24 2015

In re: BLADIMIR MORALES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Diane L. Aburto, Esquire

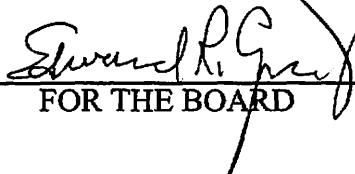
APPLICATION: Reopening

The respondent, a native and citizen of Nicaragua, appeals the June 24, 2014, Immigration Judge's order denying the respondent's motion to reopen in absentia proceedings entered on December 23, 2004. The Department of Homeland Security (DHS) has not filed an opposition to the appeal. The appeal will be sustained, proceedings will be reopened and the case will be remanded.

The record reflects that the Notice to Appear (NTA) was mailed on October 21, 2004, and included notice for the December 23, 2004, hearing (Exh. 1). The NTA was mailed to the respondent by regular mail to his address listed in his Form I-485, Application to Register Permanent Resident or Adjust Status filed in 2000 (Exh. 2). In a sworn affidavit, the respondent states that he did not receive the NTA. He submitted evidence that he moved and was not living at the Form I-485 address at the time the NTA was mailed. The respondent has also submitted evidence that the DHS was aware of his new address, as DHS mailed employment authorization documents to the respondent at that address in 2003 and 2004. Consequently, the record does not establish that the respondent was informed of his address obligations prior to his move.

Considering the totality of circumstances presented in this case, we conclude that reopening is warranted under *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001). In that case we held that entry of an in absentia order of removal is inappropriate where the record reflects that the alien did not receive, and could not be charged with receiving, the NTA that was served by mail at an address obtained from documents filed with the Service several years earlier. While the Immigration Judge apparently found that address notification advisals provided in the Form I-485 were sufficient to find the respondent may be properly charged with notice, we have found that section 239(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1), authorizes the entry of an in absentia order only after the respondent receives the warnings and advisals contained in the NTA. *See Matter of G-Y-R-, supra.*

ORDER: The proceedings are reopened and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and the entry of a new decision.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
MIAMI, FLORIDA**

IN RE :

Bladimir MORALES

A 029 376 366

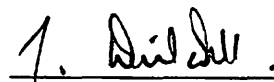
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IN REMOVAL PROCEEDINGS

Angel Fleming, ICE
Department of Homeland Security
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Assistant Chief Counsel

ORDER ON MOTION TO REOPEN

Counsel for respondent files this motion on June 14, 2014, arguing the court has jurisdiction having "previously rendered a decision" in this case. Counsel is incorrect. The court denied motions in this case on both June 16, 2005, and July 13, 2005. Respondent has exceeded the strict time and number limits on motions to reopen and reconsider. Matter of J-J-, 21 I&N Dec. 976 (BIA 1997). Further, the Board of Immigration Appeals last rendered a decision in this case on March 26, 2006, finding the motion was filed out of time. Accordingly, this motion is dismissed for lack of jurisdiction. DONE and ORDERED in chambers this Tuesday June 24, 2014.



J. Daniel Dowell
U.S. Immigration Judge

cc: Assistant Chief Counsel, Ms. Fleming
Counsel for Respondent, Ms. Aburto
Respondent at 1175 NW 79th Street Miami, Florida 33150

Mailed out

By