



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041



**DHS/ICE Office of Chief Counsel - LVG
501 South Las Vegas Blvd., Suite 200
Las Vegas, NV 89101**

Name: FU, QIANG

A 205-717-346

Date of this notice: 5/15/2018

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Snow, Thomas G
Adkins-Blanch, Charles K.
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A205 717 346 – Las Vegas, NV

Date:

MAY 15 2018

In re: Qiang FU

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The respondent, a native and citizen of China, was ordered removed from the United States in absentia on January 30, 2017, after not appearing at a hearing. He filed a motion to reopen on February 27, 2017, arguing that he did not receive the Notice of Hearing. On August 18, 2017, the Immigration Judge mailed a new Notice of Hearing to the respondent notifying him that his hearing would be on October 23, 2017. The respondent did not appear at that hearing, and on December 4, 2017, the Immigration Judge denied the respondent's February 27, 2017, motion to reopen the January 30, 2017, order of removal entered in absentia. The respondent's appeal from that decision will be sustained.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The issue on appeal is whether the Immigration Court sufficiently notified the respondent of his January 30, 2017, hearing. *See* section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(ii); *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008) (setting forth the factors to consider for rebutting the presumption of receipt of notices sent by regular mail); *Matter of C-R-C-*, 24 I&N Dec. 677 (BIA 2008). The court mailed the Notice of Hearing to the respondent's last known address, and the post office returned it as undeliverable. In his motion to reopen, the respondent states that he did not receive the Notice of Hearing and provides his mailing address, which is the same address stated on the Notice of Hearing. The respondent further states on appeal that he changed his address in June 2017, and notified the Immigration Court of his address change. However, the respondent's change of address form is not contained in the record.

The record reveals that the respondent did not receive actual notice of his January 30, 2017, hearing. It also appears that the respondent resided at the address stated on the Notice of Hearing at the time that the post office attempted delivery. In light of the foregoing, we will sustain the appeal and reopen these proceedings based on insufficient notice.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the order of removal entered in absentia is vacated, and these proceedings are reopened and remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LAS VEGAS, NEVADA

FILE NUMBER: A205 717 346)
)
IN THE MATTER OF) IN REMOVAL PROCEEDINGS
)
Qiang FU)
)
RESPONDENT)
)

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act (INA)—
Nonimmigrant—remained longer than permitted

APPLICATION: Motion to Reopen

ON BEHALF OF THE RESPONDENT:

ON BEHALF OF THE DHS:

Pro se

Maya Timis, Assistant Chief Counsel

DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent's motion to reopen will be denied. The respondent has been ordered removed from the United States based upon his failure to attend a removal hearing on two prior occasions: August 11, 2016; and January 30, 2017. An in absentia order may be rescinded if an alien establishes that he failed to appear because: 1) he was in state or federal custody and the failure to appear was through no fault of his own; 2) he did not receive notice of the proceedings; or 3) the failure to appear was due to "exceptional circumstances." INA § 240(b)(5)(C). A motion to reopen which is based on "exceptional circumstances" must be filed within 180 days of the in absentia order of removal. See Matter of Rivera, 21 I&N Dec. 599, 607 n.5 (BIA 1996); 8 C.F.R. § 1003.23(b)(4)(ii). Here, the respondent's most recent motion to reopen was filed on February 27, 2017. He claims that he did not have proper notice for the removal hearing. However, the Court scheduled the respondent's case for another master calendar hearing on October 23, 2017, and he again failed to appear. The respondent's motion to reopen is not supported with any evidence, and the Court will deny the motion.

ORDER: The respondent's Motion to Reopen is denied.

DATE: December 4, 2017

CERTIFICATE OF SERVICE

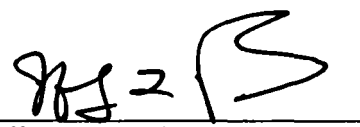
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DATE: Dec. 4, 2017 BY: COURT STAFF

Attachments: () EOIR-33 () EOIR-28

() Legal Services List () Other


Jeffrey L. Romig
Immigration Judge