



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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1717 Zoy Street
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Name: ALVARENGA-TORRES, SANDR...

A 099-536-077

Date of this notice: 12/17/2015

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:
Miller, Neil P.

Userteam: Docket

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Falls Church, Virginia 22041

File: A099 536 077 – Harlingen, TX

Date:

DEC 17 2015

In re: SANDRA CAROLINA ALVARENGA-TORRES

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Viviana Eugenia Medina, Esquire

APPLICATION: Reconsideration

This proceeding was last before the Board on September 10, 2015, when we dismissed the respondent's appeal. The respondent has now filed a timely motion to reconsider. 8 C.F.R. § 1003.2(b). The Department of Homeland Security has not filed a response. The motion to reconsider is granted, the prior decisions are vacated, and the record is remanded for further proceedings.

The respondent was ordered removed in absentia on May 4, 2006. Many years later, on June 4, 2014, she filed a motion to reopen. The respondent alleged that the Notice to Appear (NTA) was defective, and, as such, service of the NTA was not proper. Specifically, she alleged that she was served a Notice to Appear identifying another alien and alien number. The Immigration Judge denied her motion, finding that she did not support her allegation of defective notice with a copy of the wrong NTA she allegedly received (I.J. at 2). However, the Notice to Appear that the respondent claimed to have received was attached to the motion as Exhibit B.

If an NTA served on an alien does not identify the alien, it would be substantively defective as it would not identify the nature of the proceeding or the charges "against the alien." Section 239(a)(1)(A) and (D) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1)(A) and (D). Here, the respondent claims she was served an NTA that did not list her name or alien number (Motion, Exh. B). Although the DHS ultimately filed the correct NTA with the Immigration Court (Exh. 1), we find that the NTA served on the respondent was substantively defective because it did not correctly identify the respondent. *Cf. Chambers v. Mukasey*, 520 F.3d 445 (5th Cir. 2008). As such, she did not receive the requisite notice required under the Act. Accordingly, the following orders shall be issued.

ORDER: The motion is granted, and the prior decisions of the Board and Immigration Judge are vacated.

FURTHER ORDER: The record is remanded for further proceedings in accordance with this decision.



FOR THE BOARD