



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: BODIAN, FAMARA

A 079-606-306

Date of this notice: 12/20/2018

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:
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A079-606-306 – Kansas City, MO

Date:

DEC 20 2018

In re: Famara BODIAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mehak Naveed, Esquire

ON BEHALF OF DHS: Kimberly A. Burgess
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Senegal, appeals the decision of the Immigration Judge, dated July 23, 2018, denying his motion to reopen. The Department of Homeland Security (“DHS”) is opposed to the respondent’s appeal.

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) (2017). 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).

Considering the totality of the circumstances presented in this case, we conclude that these removal proceedings should be reopened on account of lack of notice. Section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(ii). The Notice to Appear, issued on October 20, 2008, and all subsequent hearing notices were sent to the respondent’s former addresses on 89th Street and Crystal Lane in Kansas City, Missouri. However, on appeal, the respondent has presented evidence that, as early as July 2007, he had notified the DHS that he was residing on E. 13th Street in Independence, Missouri. Thus, as the record supports a holding that the NTA and hearing notices were sent to old addresses and that the respondent notified the DHS of his new address, reopening on account of lack of notice is warranted. *Matter of G-Y-R*, 23 I&N Dec. 181 (BIA 2001). Accordingly, the following order will be entered.

ORDER: The order of removal is rescinded on account of lack of notice, these proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings and the entry of a new decision.



FOR THE BOARD