



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 - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303

Name: B [REDACTED] V [REDACTED], K [REDACTED] A [REDACTED] A [REDACTED] 317

Date of this notice: 6/27/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Kelly, Edward F.
Kendall Clark, Molly
Greer, Anne J.

Printed Name:
User team: Docket

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [REDACTED] 317 – Atlanta, GA

Date:

JUN 27 2017

In re: K[REDACTED] A[REDACTED] B[REDACTED] V[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gregory VanderWoude, Esquire

ON BEHALF OF DHS: Sheila E. Gallow
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed in absentia on November 15, 2016. The Immigration Judge denied his timely filed motion to reopen. The respondent has now filed an appeal from the Immigration Judge's decision. The Department of Homeland Security opposes the appeal. The appeal will be sustained.

We review an Immigration Judge's findings of fact, including credibility findings, to determine whether they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all questions of law, discretion, and judgment. 8 C.F.R. § 1003.1(d)(3)(ii).

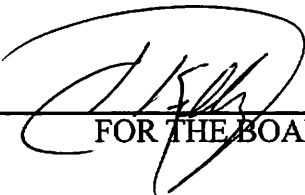
There is no dispute that the respondent received proper "notice" of his hearing through his mother. Notwithstanding notice, the respondent established that "exceptional circumstances" prevented him from appearing at his hearing.¹ See section 240(e)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(e)(1) (defining exceptional circumstances). Specifically, the respondent was an infant and his mother, who is also in proceedings, did not bring him to their consolidated hearing. According to the record before us, the respondent's mother came to the hearing without the respondent because she believed an infant's presence in Immigration Court was excused. Under the circumstances, we conclude that the motion to reopen should have been granted. Accordingly, the appeal will be sustained.

ORDER: The respondent's appeal is sustained.

¹ An alien who seeks to have proceedings reopened following an in absentia order of removal based on a claim of exceptional circumstances has 180 days to file a motion to reopen. See 8 C.F.R. § 1003.23(b)(4)(ii). In contrast, an alien who seeks reopening based on lack of notice may move to reopen proceedings at any time. *Id.*

FURTHER ORDER: The Immigration Judge's decision denying reopening is vacated, the proceedings are reopened, and the in absentia order of removal is rescinded.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ATLANTA, GEORGIA

IN THE MATTER OF: [REDACTED]

DATE: Nov 15, 2016

CASE NO. [REDACTED] 317

RESPONDENT IN REMOVAL PROCEEDINGS

DECISION

Jurisdiction was established in this matter by the filing of the Notice to Appear issued by the Department of Homeland Security, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. § 1003.14(a), 103.5a.


The respondent was provided written notification of the time, date and location of the respondent's removal hearing. The respondent was also provided a written warning that failure to attend this hearing, for other than exceptional circumstances, would result in the issuance of an order of removal in the respondent's absence provided that removability was established. Despite the written notification provided, the respondent failed to appear at his/her hearing, and no exceptional circumstances were shown for his/her failure to appear. This hearing was, therefore, conducted in absentia pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act.

[] At a prior hearing the respondent admitted the factual allegations in the Notice to Appear and conceded removability. I find removability established as charged.

X The Department of Homeland Security submitted documentary evidence relating to the respondent which established the truth of the factual allegations contained in the Notice to Appear. I find removability established as charged.

I further find that the respondent's failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any pending applications and any applications the respondent may have been eligible to file. Those applications are deemed abandoned and denied for lack of prosecution. See Matter of Pearson, 13 I&N Dec. 152 (BIA 1969); Matter of Perez, 19 I&N Dec. 433 (BIA 1987); Matter of R-R, 20 I&N Dec. 547 (BIA 1992).

ORDER: The respondent shall be removed to **EL SALVADOR** on the charge(s) contained in the Notice to Appear.


J. DAN PELLETIER
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
180 TED TURNER DR SW, STE. 241
ATLANTA, GA 30303

LAFEOTA
VanderWoude, Gregory
4900 Leesburg Pike #411
Alexandria, VA 22302

IN THE MATTER OF [REDACTED] FILE A [REDACTED] 317 DATE: Jan 23, 2017

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X 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
5107 Leesburg Pike, Suite 2000
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
180 TED TURNER DR SW, STE. 241
ATLANTA, GA 30303

___ OTHER: _____

sb

COURT CLERK
IMMIGRATION COURT

CC: DHS-OCC

FF

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ATLANTA, GEORGIA

IN THE MATTER OF:

B [REDACTED] V [REDACTED], K [REDACTED] A [REDACTED]

Respondent

IN REMOVAL PROCEEDINGS

File No. A [REDACTED] 317

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of this **Motion to Reopen an In Absentia Order of Removal**, it is
HEREBY ORDERED that the motion be _____ GRANTED DENIED because:

- ☐ DHS does not oppose the motion.
- ☐ The Respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.

☒ Other: Removability established
Notice in accord with Regulations
No exceptional circumstances. Motion had
expired notice and chose not to bring
it.

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Respondents' Master Calendar Hearing will be set for _____.

1-19-2017
Date

[Signature]
Immigration Judge

cc: Gregory VanderWoude, Esq.
L.A.F.E.O.T.A.
4900 Leesburg Pike, Suite 411
Alexandria, VA 22302

Office of the Chief Counsel, United States Department of Homeland Security
180 Spring Street SW, Suite 332
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