



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530

**Dobbs, Jered  
Verdin Law Firm  
900 Jackson St, Ste. 535  
Dallas, TX 75202**

**DHS/ICE Office of Chief Counsel - SNA  
8940 Fourwinds Drive, 5th Floor  
San Antonio, TX 78239**

**Name: MEDINA-MARTINEZ, CLAUDIA Y... A 079-038-287**

**Date of this notice: 4/28/2015**

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

Userteam: Docket

**For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)**

*Handwritten signature/initials*

Falls Church, Virginia 20530

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File: A079 038 287 – San Antonio, TX

Date:

APR 28 2015

In re: CLAUDIA YARENI MEDINA-MARTINEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jered Dobbs, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from an Immigration Judge's decision dated August 1, 2014, denying the respondent's motion to reopen removal proceedings, which had been conducted in absentia on August 1, 2002. The respondent filed a timely appeal from that decision. The appeal will be sustained, the in absentia order will be vacated, proceedings will be reopened, and the record will be remanded.

Upon de novo review of the record and in light of the totality of circumstances presented in this case, we find it appropriate to reopen these proceedings to allow the respondent another opportunity to appear for a hearing before an Immigration Judge.

ORDER: The appeal is sustained, the in absentia order is vacated, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.

  
\_\_\_\_\_  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
800 DOLOROSA STREET, SUITE 300  
SAN ANTONIO, TX 78207

Verdin Law Firm  
Dobbs, Jered, Esq.  
900 Jackson St, Ste. 535  
Dallas, TX 75202

IN THE MATTER OF  
MEDINA-MARTINEZ, CLAUDIA YARENI

FILE A 079-038-287

DATE: Aug 25, 2014


\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

\_\_\_ 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 20530

\_\_\_ 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  
800 DOLOROSA STREET, SUITE 300  
SAN ANTONIO, TX 78207

✓ OTHER: ORDER OF THE IMMIGRATION JUDGE.

  
\_\_\_\_\_  
COURT CLERK  
IMMIGRATION COURT

CC: DISTRICT COUNSEL  
8940 FOURWINDS DR., 5TH FLOOR  
SAN ANTONIO, TX, 782971939

FF

UNITED STATES DEPARTMENT OF JUSTICE  
Executive Office for Immigration Review  
Immigration Court

File A079 038 287

In the Matter of

Claudia Yareni Medina-Martinez

In Removal Proceedings

Order of the Immigration Judge

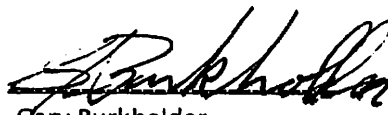
The respondent in the above captioned case was scheduled for a Master Docket hearing before the Immigration Court on July 30, 2002 and did not appear. At the request of counsel for the Department of Homeland Security, a hearing was conducted in the respondent's absence and she was ordered removed. The respondent has subsequently filed a motion to reopen the proceeding, alleging that she had not received notice of her hearing, thereby meeting the requirement for reopening under § 240(b)(5)(C)(ii) of the Act [8 USC §1229a(b)(5)(C)(ii)]. The motion to reopen will be denied.


The respondent was properly personally served with a charging document on June 20, 2001. See *Matter of Cubor*, 25 I&N Dec. 470 (BIA 2011). That charging document was filed with the court July 19, 2001. On June 22, 2001 the respondent was released from DHS custody on recognizance to the custody of her grandmother on the ground that her mother could not get time off work to collect her daughter. When the then-pregnant respondent was released (she gave birth on February 5, 2002) she and her grandmother provided the address of 1215 N. Cooper St., #218, Arlington, TX 76011. The respondent was informed in Spanish that any change or correction of her address, including the initial provision of an address, must be reported to the court within five days. In the event, the respondent acknowledges in her motion that she did not ever reside at that address but rather at a different apartment. With respect to the issue of notice to the respondent, proper notice of the hearing was mailed to the address provided by the respondent as required under §239(a)(2)(A) & §239(c) of the Act [8 USC §1229(a)(2)(A) & §1229(c)] on September 5, 2001. A second notice, rescheduling the case to July 30, 2002, was mailed to the respondent at the specified address on May 20, 2002. No change of address (Form EOIR - 33) has ever been received from the respondent since as required by § 239(a)(1)(F)(ii) of the Act [8 USC §1229(a)(1)(F)(ii)] and Title 8 CFR §1003.15(d)(2) until one was received with the motion to reopen on May 1, 2013. The Entry of Appearance (Form E-28) received with the motion to reopen filed on May 1, 2013 also provides that different address that was not previously reported to the court, which is not the address the respondent had specified and was recorded for notice purposes when she was released with her Notice to Appear. Neither notice was returned as undeliverable by the U. S. Postal Service. The only relevant material provided with the motion to reopen is the affidavit of the respondent acknowledging that she never resided at the address provided for notice purposes and the affidavit of an alleged aunt, executed in 2013, that she lived at the address that was actually given until an unspecified date in 2002 but does not now recall any "letter" for respondent arriving over a decade previous to the time the affidavit was executed. I find that notice of the hearing was sent to the respondent on May 20, 2002 to the precise address she specified for that purpose upon her release from custody. I also note that the Court's order, served to that same address on August 1, 2002 was not returned by the U. S. Postal Service as undeliverable. I find that notice properly sent to the address provided by the respondent pursuant to §239(a)(1)(F) of the Act [8 USC §1229(a)(1)(F)] is sufficient and requires the Court to proceed *in absentia*. See *Matter of M - D -*, 23 I&N Dec. 540 (BIA 2003), *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001) and *Matter of Grijalva*, 21 I&N Dec. 27 (BIA 1995). §239(a)(1)(F)(i) [8 USC

§1229(a)(1)(F)(i)] places responsibility on the respondent of providing an address where the respondent may be contacted. §239(c) of the Act makes clear that "Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F)." There is such proof in this record consisting of the record copy of the notice sent to the address specified by the respondent. The Board of Immigration Appeals directs, in *Matter of M - R - A -*, 24 I&N Dec. 665 (BIA 2008) that all relevant evidence must be considered. The respondent was clearly not living at the address she had provided for notice purposes at the time of her release from custody nor at the time of filing the motion to reopen over a decade later. There is no evidence in the existing record that respondent made any attempt to keep her address current with the court from 2001 forward although allegedly awaiting a hearing notice. The respondent made no effort to secure representation in anticipation of a removal hearing although served with the advisals connected thereto when she was apprehended. The respondent made no attempt to present any application either to the court or USICE during the over 12 years she has been in the United States. The respondent made no effort to inquire about the status of her case for over ten years. I find that the intent of the statutory scheme set up by Congress was to make the respondent responsible for providing a valid and reliable address and that notice sent to that address is sufficient under the act to provide the notice required by law and regulation. See §240(b)(5)(A) of the Act [8 USC §1229a(b)(5)(A)]. I note with respect to the question of "due diligence" that the respondent took no action to contact the court through changes of address which occurred at unknown times (there are 5 different address contained in the supporting documentation at ps. 12, 21, 27, 53, & the current, reported one). I find as fact that the respondent's current lack of evidence other than her aunt's (who left the specified address on an unknown date in 2002) representation as to lack of recollection of her hearing notice and subsequent removal order and the lack of any attempt to keep a current address with the court through further relocations while allegedly awaiting a hearing notice is not sufficient to overcome the presumption of proper (and binding) notice. Where no address is given notice is not required. Where an incorrect or invalid address is given and never corrected notice is not required. See *Gomez-Palacios v. Holder*, 560 F. 3<sup>rd</sup> 354 (5<sup>th</sup> Cir. 2009). The presumption of proper notice has not been overcome on this record. I find that the motion presented does not meet the requirements for reopening under §240(b)(5)(C)(ii) of the Act and Title 8 CFR §1003.23(b)(4)(ii).

The respondent has provided no other ground for reopening her case. Given the respondent's record of lack of any attention to her case it is found inappropriate for any *sua sponte* reopening on the court's own motion at the respondent's request and it will not be reopened on that basis. With respect to the Department of Homeland Security's various exercises of prosecutorial or administrative discretion, such action can be taken by the DHS before, during or subsequent to removal proceedings, reopening of the removal proceeding is not required for that purpose nor would there be created any relief under the jurisdiction of the Immigration Court. The respondent may seek a joint motion to reopen with USICE at any time. See Title 8 CFR §1003.23(b)(4)(iv). I therefore find that the requirements for reopening have not been met on this record and the motion to reopen shall be and is hereby DENIED. SO ORDERED.

Date: August 1, 2014  
Place: San Antonio, Texas

  
Gary Burkholder  
Immigration Judge

CERTIFICATE OF SERVICE  
THIS DOCUMENT WAS SERVED BY: MAIL (M) ☒  
PERSONAL SERVICE (P) ☐  
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒  
ALIEN'S ATT/REP ☒ DHS  
DATE: 8-7-14 BY: COURT STAFF   
Attachments: ☐ EOIR-33 ☐ EOIR-28  
☐ ... Services List ☐ Other

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
800 DOLOROSA STREET, SUITE 300  
SAN ANTONIO, TX 78207

DOBBS IMMIGRATION LAW  
DOBBS, DAWN ESQ  
3310 LEBANON ROAD, STE 203  
HERMITAGE, TN 37076

IN THE MATTER OF  
MEDINA-MARTINEZ, CLAUDIA YARENI

FILE A 079-038-287

DATE: Aug 7, 2014

UNABLE TO FORWARD - NO ADDRESS PROVIDED

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IMMIGRATION COURT

CC: DISTRICT COUNSEL  
8940 FOURWINDS DR., 5TH FLOOR  
SAN ANTONIO, TX, 782971939

FF

UNITED STATES DEPARTMENT OF JUSTICE  
Executive Office for Immigration Review  
Immigration Court

File A079 038 287

In the Matter of

Claudia Yareni Medina-Martinez

In Removal Proceedings

Order of the Immigration Judge

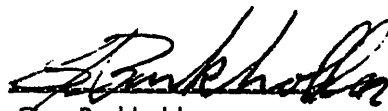
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Date: August 1, 2014  
Place: San Antonio, Texas

  
Gary Burkholder  
Immigration Judge

CERTIFICATE OF SERVICE  
THIS DOCUMENT WAS SERVED BY: MA (M)  
PERSONAL SERVICE (R)  
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer  
[ ] ALIEN'S ATT/REP [ ] DHS  
DATE: 8-7-14 BY: COURT STAFF  
Attachments: [ ] EOIR-33 [ ] EOIR-28