



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: E [REDACTED], J [REDACTED] J [REDACTED]

A [REDACTED]-479

Date of this notice: 12/27/2019

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:
Grant, Edward R.**

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A [REDACTED]-479 – San Antonio, TX

Date:

In re: J [REDACTED] J [REDACTED] E [REDACTED]

DEC 27 2019

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Helen Ramirez, Esquire

ON BEHALF OF DHS: Emmanuel Garcia
Assistant Chief Counsel

APPLICATION: Reopening and termination

By a decision of an Immigration Judge of August 14, 2018, pursuant to the respondent's motion to reopen and terminate proceedings to apply for adjustment of status before the United States Citizenship and Immigration Services based on an approved immediate relative petition, proceedings in this matter were terminated. The Department of Homeland Security has appealed. The respondent has opposed the appeal. The appeal will be dismissed.

The respondent was ordered removed in absentia by an order of an Immigration Judge entered on June 29, 2004. An order entered in absentia may be reopened at any time if the alien demonstrates that she did not receive notice in accordance with sections 239(a)(1) or (2) of the Act, 8 U.S.C. §§ 1229(a)(1), (2). See 8 C.F.R. § 1003.23(b)(4)(ii); see also *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001). The decision of the Immigration Judge of August 14, 2018, reopened and terminated proceedings on the basis of the respondent's prima facie eligibility to adjust her status on the basis of an approved relative petition and in reliance upon *Pereira v. Sessions*, 138 S. Ct. 2105 (2018).

The evidence of record makes clear that the respondent did not receive a Notice to Appear as the one issued in her name, containing the appropriate warnings regarding failure to appear, bears the signature of her mother. The respondent was 9 years old and did not have notice of the proceedings or the legal ability to appear. Thus, this case is distinguishable from the circumstances addressed in *Matter of Pena-Mejia*, 27 I&N Dec. 546 (BIA 2019), and *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018).

Because the deficiencies in the Notice to Appear issued to the respondent were not subsequently cured, as they related to her, depriving her of actual notice of her hearing, we are in agreement with the disposition of this matter reached by the Immigration Judge. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.



FOR THE BOARD