U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: GERONIMO, ARTURO

A 092-998-434

Date of this notice: 9/1/2020

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:
Donovan, Teresa L.
Pepper, S. Kathleen
MONSKY, MEGAN FOOTE

Userteam: Docket

File: A092-998-434 – Seattle, WA

Date: SEP - 1 2020

In re: Arturo GERONIMO

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jeffrey Goldman, Esquire

APPLICATION: Reopening; remand

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's March 20, 2019, decision. In that decision, the Immigration Judge denied the respondent's motion to reopen his removal proceedings in which he was ordered removed in absentia on May 16, 2018. The Department of Homeland Security ("DHS") has not filed an opposition to the appeal. The appeal will be sustained, the motion to reopen will be granted, the in absentia order will be rescinded, and the record will be remanded for further proceedings.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i) (2020). We review de novo all other issues, including issues of law, judgment, and discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent entered the United States as a lawful permanent resident in 1991 (IJ at 1). On January 6, 2017, the DHS detained the respondent at the Canadian border and informed him of their intention to place him in removal proceedings based on his 2008 domestic violence offenses (IJ at 1; Respondent's Mot. at Tab A, 13). That same day, the respondent provided the DHS with an address to which notice of his removal hearing could be mailed, and then the DHS personally served him with a Notice to Appear (Form I-862), listing the address the respondent had provided and released him from detention (IJ at 1-2; Respondent's Mot. at Tab A, 13). On May 26, 2017, and again on July 24, 2017, the Seattle Immigration Court mailed notice of the respondent's removal hearing to the address the respondent had provided to the DHS in January 2017 (IJ at 2). These notices informed the respondent that his removal hearing was scheduled to take place on November 9, 2017 (IJ at 2). Both notices of hearing were returned to the Immigration Court as undeliverable, and the respondent did not appear for this hearing (IJ at 2; Exh. 2).

The Immigration Judge continued proceedings after requesting documentation regarding the respondent's criminal convictions from the DHS (IJ at 2). The Immigration Court sent an additional notice of hearing to the address the respondent had provided, informing him that his removal hearing was scheduled to take place on May 16, 2018 (IJ at 2; Exh. 5). The DHS also filed additional documents, including Additional Charges of Inadmissibility/Deportability (Form I-261), and mailed this form to the respondent at the address he had provided (IJ at 2). Neither the notice of hearing, nor the Form I-261 was returned as undeliverable (IJ at 2). The respondent did not appear for his May 16, 2018, hearing and was ordered removed in absentia (IJ at 2). On January 28, 2019, the respondent moved to rescind the in absentia order and reopen

his removal proceedings (IJ at 2). The Immigration Judge denied this motion and this appeal followed.

The respondent's motion to reopen is untimely. *See* 8 C.F.R. § 1003.23(b)(4)(ii). Nevertheless, he may move to rescind the in absentia order at any time if he establishes that he did not receive notice of the removal hearing in accordance with sections 239(a)(1)-(2) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229(a)(1)-(2) (2018). *See* section 240(b)(5)(C)(ii) of the Act, 8 U.S.C. § 1229a(b)(5)(C)(ii); *see also* 8 C.F.R. § 1003.23(b)(4)(ii).

To overcome the presumption of receipt of a notice of hearing sent by regular mail, which is weaker than the presumption applied to a notice of hearing sent by certified mail, an alien must present sufficient evidence showing that the notice was not received at the most recent address provided. *Matter of M-R-A-*, 24 I&N Dec. 665, 673 (BIA 2008). In this case, the respondent attached a declaration to his motion indicating that he had submitted a change of address form "[s]ometime within the next month" after his release from DHS detention in January 2017, listing a new address to which notice of his removal hearing could be mailed, and he claims "did not receive any notice of any kind in the mail" regarding his removal hearing at this new address (IJ at 3-4; Respondent's Mot. at Tab A, 13). He additionally claims he sought to renew his permanent resident card with U.S. Citizenship and Immigration Services ("USCIS") in February 2018—3 months prior to his removal hearing (Respondent's Mot. at Tab A, 13). The correspondence he has attached to his motion relating to his efforts to renew his residence card contains the new address the respondent claims to have listed on the change of address form he provided to immigration authorities in 2017 (Respondent's Mot. at Tabs C-D, F). He learned from the USCIS in July 2018 that his resident card could not be renewed because he had been ordered removed in absentia in May 2018 (Respondent's Mot. at Tabs A, C).

On the advice of an individual who represented herself as an employee at a law firm, the respondent, on August 10, 2018, filed a motion asking the USCIS to reopen and reconsider its decision regarding his permanent resident card (Respondent's Mot. at Tabs A, F).[1] The USCIS dismissed his motion on January 3, 2019 (Respondent's Mot. at Tabs A, F). The respondent sought advice from a new attorney and filed his motion about 3 weeks after the USCIS denied his motion (Respondent's Mot. at Tab A).

The Immigration Judge did not specifically address, nor did she question the veracity of, the above evidence the respondent submitted in support of his motion. However, it is well settled that we "must accept as true the facts asserted by [an alien in a motion to reopen], unless they are 'inherently unbelievable.'" *Silva v. Barr*, No. 16-70130, 2020 WL 3886480, at *8 (9th Cir. July 10, 2020) (citation omitted).

[1] On appeal, the respondent has submitted evidence that, in October 2019, he filed a complaint alleging "unauthorized practice of law" against the individual who advised him to move to reopen and reconsider with the USCIS (Respondent's Br. at Tab B). The Immigration Judge did not have the benefit of this evidence when she adjudicated the respondent's motion.

In light of the foregoing evidence, we conclude that the respondent has submitted sufficient proof to overcome the presumption of delivery of the notice of hearing pursuant to the standards set forth in *Matter of M-R-A-*. More precisely, his evidence establishes that: he provided immigration authorities with a new address following his release from detention in 2017; he used this new address to seek renewal of his permanent resident card months prior to his removal hearing; he did not receive notice of his hearing at this new address; and he acted with due diligence to rescind and reopen the in absentia order of removal once he learned of it in July 2018. *See Matter of C-R-C-*, 24 I&N Dec. 677, 679-80 (BIA 2008) (concluding that reopening was appropriate where an alien had submitted similar evidence indicating that he had not received notice). We will therefore sustain the respondent's appeal, reopen his removal proceedings, rescind the in absentia removal order, and remand the record for further proceedings. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: These proceedings are reopened, the Immigration Judge's in absentia order is rescinded, and the record is remanded to the Immigration Court for further proceedings.

FOR THE BOARD