



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Litman, Michael Paul
The Litman Law Firm, PC
1776 Vine St.
Denver, CO 80206**

**DHS/ICE Office of Chief Counsel - CHI
525 West Van Buren Street
Chicago, IL 60607**

Name: AMAYA-FLORES, PEDRO

A 094-788-974

Date of this notice: 12/2/2016

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.
Mann, Ana
Adkins-Blanch, Charles K.

Userteam: Docket

**For more unpublished BIA decisions, visit
www.irac.net/unpublished/index/**

Falls Church, Virginia 22041

File: A094 788 974 – Chicago, IL

Date:

DEC - 2 2016

In re: PEDRO AMAYA-FLORES

IN REMOVAL PROCEEDINGS

APPEAL

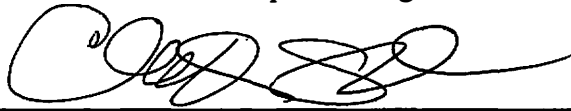
ON BEHALF OF RESPONDENT: Michael Paul Litman, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, appeals from the May 16, 2016, Immigration Judge's decision denying the respondent's motion to reopen removal proceedings which had been conducted in absentia on September 7, 2006, with an amended order issued on February 8, 2016.¹ The Department of Homeland Security (DHS) has not filed a reply to the appeal. The appeal will be sustained.

Because the removal order was amended and re-issued on February 8, 2016, the respondent's April 22, 2016, motion to reopen for new relief was timely filed. Furthermore, the respondent has shown prima facie eligibility for relief, as he and his wife, who has filed a visa petition on his behalf, are the parents of a child born in May 2015. Accordingly, the appeal will be sustained, the proceedings will be reopened, and the record will be remanded.

ORDER: The appeal is sustained, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings.



FOR THE BOARD

¹ The Immigration Judge granted the DHS motion to amend the order to reflect that the respondent be removed to El Salvador as reflected in the Form I-213 (Exh. 3).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

The Litman Law Firm, PC
Litman, Michael Paul
1776 Vine St.
Denver, CO 80206

Date: May 16, 2016

File A094-788-974

In the Matter of:
AMAYA-FLORES, PEDRO

XX Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before 06/15/2016. The appeal must be accompanied by proof of paid fee (\$110.00).

 Enclosed is a copy of the oral decision.

 Enclosed is a transcript of the testimony of record.

 You are granted until to submit a brief to this office in support of your appeal.

 Opposing counsel is granted until to submit a brief in opposition to the appeal.

 Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

 MP
Immigration Court Clerk

UL

cc: ANASTASIE SENAT, ASST. CHIEF COUNSEL, DHS
525 W. VAN BUREN, STE. 701
CHICAGO, IL 60607

Immigrant & Refugee Appellate Center, LLC | www.irac.net

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

In the Matter of:
AMAYA-FLORES, PEDRO

Case No.: A094-788-974

Docket: CHICAGO, ILLINOIS

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of RESPONDENT

() Motion to Reconsider an Immigration Judge's decision

(X) Motion to Reopen proceedings

filed in the above entitled matter, it is hereby ordered that the motion

() Be Granted

(X) Be Denied for reasons indicated in the attached decision

NB: The order of removal has been amended to reflect that
Respondent should be removed to HONDURAS, not
El Salvador. See attached decision.

Jennie Giambastiani
JENNIE L. GIAMBASTIANI
Immigration Judge
Date: 5/16/16

Appeal: ~~NO~~ APPEAL (A) I/B)
Appeal Due By: ~~Oct 10, 2006~~

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [] ALIEN [] ALIEN c/o Custodial Officer [X] Alien's ATT/REP [] DHS

DATE: 5/16/16 BY: COURT STAFF

Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS**

File: A094-788-974

Date: May 16, 2016

In the Matter of:

Pedro Amaya-Flores,

Respondent.

)
)
)
)
)

IN REMOVAL PROCEEDINGS

Charge: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act")
– alien present without having been admitted or paroled.

Application: Motion to Rescind *In Absentia* Removal Order.

ON BEHALF OF THE RESPONDENT:

Micheal Litman, Esq.
1776 Vine Street
Denver, CO 80206

ON BEHALF OF THE DHS/ICE:

Assistant Chief Counsel
525 W. Van Buren, Suite 700
Chicago, Illinois 60607

DECISION OF THE IMMIGRATION JUDGE

The respondent was placed in removal proceedings after being encountered by Border Patrol Agents near Hidalgo, Texas on or about May 13, 2006. It was determined that the respondent was not a native or citizen of the United States and that he had entered the country without inspection or parole by an Immigration Officer. On his Notice to Appear ("NTA", Exhibit 1), he is charged with removability under NA Section 212(a)(6)(A)(i) as an alien present in the United States who has not been admitted or paroled. That NTA was personally served on him as reflected on the certificate of service found on the NTA.

The respondent was scheduled to appear for a removal hearing before the Immigration Court at Chicago, Illinois on September 7, 2006 before Immigration Judge Carlos Cuevas. *See* Exhibit 2 (Hearing Notice). The respondent failed to appear despite having been properly notified of the charges against him and the consequences for failing to appear as listed on the second page of the NTA. Additionally, he was provided with proper notice of his hearing because the Court mailed a hearing notice to him at the address he had provided upon release from DHS custody. Based upon these facts, the DHS moved that the respondent be ordered removed in absentia and presented the "Record of Deportable Alien" (Form I-213 – Exhibit 3) to

support the charge of removability against the respondent. The Court found that the charge of removability was supported by the information contained on the I-213 and ordered the respondent removed.¹

On April 22, 2016, the respondent, through counsel, filed a motion to rescind the *in absentia* removal order. The motion only argues that reopening should be granted based on the respondent's marriage to a United States citizen in March 2016 and the possibility of pursuing a provisional waiver of inadmissibility once a visa petition is approved on his behalf. No other basis for reopening is argued. The respondent's attachments to the motion to reopen include proof that an I-130 visa petition was filed on his behalf on April 14, 2016. Most notably, the documents provided by the respondent all list his country of birth and citizenship as Honduras. No explanation is offered as to the discrepancy between his declaration of El Salvadorian citizenship when first encountered in 2006, nor does he address why he failed to appear for his removal hearing.

Analysis

A motion to reopen an *in absentia* removal order may **only** be granted upon a showing that the alien did not receive proper notice or that the alien's failure to appear was due to "exceptional circumstances." See INA Section 240(b)(5)(C) (emphasis added). If an individual is represented by counsel, notice shall be served upon the attorney or representative of record. 8 C.F.R. Section 1292.5(a). The "exceptional circumstances" that may support a motion to reopen are narrowly limited by the statute, and refer to serious circumstances beyond the alien's control, such as serious illness of the alien or a death in the alien's immediate family, but do not include less compelling circumstances. INA Section 240(e)(1). The respondent has the burden of proving "exceptional circumstances," which must be supported by affidavits or other evidentiary material. 8 C.F.R. Section 1003.23(b)(3).

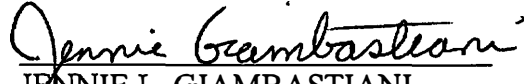
This court finds that the respondent has failed to identify a basis for reopening. He does not argue lack of notice or any exceptional circumstance that would excuse his failure to appear. As such, he has failed to meet his burden of proof for purposes of reopening his removal proceedings. Accordingly, the following Order will be entered:

¹ The Court erroneously listed Morocco as the country of removal on the original *in absentia* order. The DHS subsequently moved that the Court issue an amended order reflecting El Salvador as the country of removal based upon the respondent's claim to El Salvadorian citizenship when encountered by the Border Patrol in 2006. The court issued its amended order with El Salvador listed as the country of removal on February 8, 2016.

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that the respondent's motion to reopen be DENIED.

IT IS FURTHER ORDERED that the respondent be removed to **HONDURAS** based upon the documentation he has attached to the Motion to Reopen reflecting that his true country of citizenship is HONDURAS, not El Salvador.


JENNIE L. GIAMBASTIANI
IMMIGRATION JUDGE