U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: PATEL, KAMLESHKUMAR G

A 087-385-865

Date of this notice: 9/25/2017

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:
Adkins-Blanch, Charles K.
Mann, Ana
Grant, Edward R.

Userteam: Docket

File: A087 385 865 – Atlanta, GA

Date: SEP 25 2017

In re: Kamleshkumar G. PATEL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Bhavya Chaudhary, Esquire

ON BEHALF OF DHS: Joy Lampley
Assistant Chief Counsel

APPLICATION: Reopening

The respondent has appealed the Immigration Judge's November 4, 2015, decision that denied the respondent's motion to reopen proceedings in which he was ordered removed in absentia. The appeal will be sustained and the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. 1003.1(d)(3)(i) (2017). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of India who was admitted to the United States as a nonimmigrant under section 101(a)(15) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15) (2017). On December 15, 2006, the respondent filed an Application to Extend/Change Nonimmigrant Status (Form I-539) with the United States Citizenship and Immigration Services (USCIS), an agency within the Department of Homeland Security (DHS), in order to change to a different nonimmigrant status. Over 2 years later his Form I-539 was denied by the USCIS and on that same day removal proceeding were initiated against the respondent by the issuance of a Notice to Appear (Form I-862) that was sent to him by regular mail. The Notice to Appear ordered the respondent to appear before an Immigration Judge at a date and time to be set. After a hearing notice was sent to the respondent setting his hearing for August 27, 2009, the respondent failed to appear as scheduled and he was ordered removed in absentia under section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A).

On November 5, 2014, the respondent filed a motion to reopen and rescind the in absentia order under section 240(b)(5)(C)(ii) of the Act arguing that he received neither the Notice to Appear nor the subsequent hearing notice. The respondent submitted evidence with his motion to support his specific claim that the Notice to Appear was returned to the DHS. Without addressing this issue, the DHS filed a generalized opposition to the respondent's motion. In adjudicating the motion, the Immigration Judge raised some concerns regarding the respondent's documentary evidence and proceeded to deny the motion by relying upon the United States Court of Appeals for the Eleventh Circuit's decision in *Dominguez v. United States Att'y Gen.*, 284 F.3d 1258 (11th Cir. 2002).

We have previously addressed in a precedent decision why Immigration Judges in the Eleventh Circuit should not follow *Dominguez*, 284 F.3d 1258, when analyzing an alien's claim that he or she did not receive the Notice to Appear. In *Matter of Anyelo*, 25 I&N Dec. 337 (BIA 2010) we distinguished the decision in *Dominguez*, 284 F.3d 1258, and reaffirmed the applicability of our decision in *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001) (en banc), to all circuits including the Eleventh Circuit. We explained that "[t]he Eleventh Circuit's decision in *Dominguez* was primarily devoted to the issue of due process rather than statutory interpretation" and thus does not control whether a respondent has received the notice required under section 239(a)(1) of the Act, 8 U.S.C. § 1229(a)(1). *Matter of Anyelo*, 25 I&N Dec. at 338. We further noted that the court in *Dominguez*, 284 F.3d 1258, never considered our holding in *Matter of G-Y-R-*, 23 I&N Dec. 181, regarding what constitutes an "address" under section 239(a)(1)(F) of the Act. *Matter of Anyelo*, 25 I&N Dec. at 339. Thus, when an alien argues in removal proceedings that the Notice to Appear was not properly received, an Immigration should closely examine the alien's claim pursuant to *Matter of G-Y-R-*, 23 I&N Dec. 181, to determine whether the alien has received (or can be properly charged with receiving) the 239(a)(1)(F) warnings and advisals contained in the Notice to Appear.

The Board is charged with issuing precedent decisions in order to provide clear and uniform guidance to the DHS, the Immigration Judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations. 8 C.F.R. § 1003.1(d)(1). A precedent decision of the Board applies to all proceedings involving the same issue unless and until it is modified or overruled by the Attorney General, the Board, Congress, or a Federal court. *Matter of E-L-H-*, 23 I&N Dec. 814 (BIA 2005). In *Matter of E-L-H-*, 23 I&N Dec. 814, we reached this determination by relying on the plain language of 8 C.F.R. § 1003.1(g) which states that "[e]xcept as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States." Our decisions in *Matter of G-Y-R-*, 23 I&N Dec. 181, and *Matter of Anyelo*, 25 I&N Dec. 337, are precedent decisions that have not been modified or overruled in a published decision by the Eleventh Circuit or otherwise by the Attorney General, the Board or Congress. *See generally Kohli v. Gonzales*, 473 F.3d 1061, 1069 (9th Cir. 2006) (citing with approval the Board's reasoning in *Matter of G-Y-R*, 23 I&N Dec. 181). Therefore, they continue to apply with respect to whether a respondent has received the notice required under section 239(a)(1) of the Act.

The Immigration Judge's finding that an unpublished decision from the Eleventh Circuit establishes that some inconsistency exists between *Dominguez*, 284 F.3d 1258, and *Matter of G-Y-R-*, 23 I&N Dec. 181, contradicts our precedent decision in *Matter of Anyelo*, 25 I&N Dec. 337. Moreover, the decision cited by the Immigration Judge was issued prior to our decision in *Matter of Anyelo*, 25 I&N Dec. 337, and the Board is not bound by unpublished decisions of the Eleventh Circuit. *See* U.S. Ct. of App. 11th Cir. Rule 36-2 (stating that unpublished opinions are not considered binding precedent but may be cited as persuasive authority). For these reasons, in adjudicating motions to reopen an in absentia order of removal based on a claim that the respondent did not receive the Notice to Appear, Immigration Judges are to follow the Board's precedents in

Matter of G-Y-R-, 23 I&N Dec. 181, and *Matter of Anyelo*, 25 I&N Dec. 337, not the Eleventh Circuit's decision in *Dominguez*, 284 F.3d 1258.

In this case the Immigration Judge determined that the respondent did not establish that the Notice to Appear was returned to the DHS. We conclude that the Immigration Judge's factual determination in this regard was clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i). Specifically, in support of the respondent's motion to reopen he submitted evidence that on March 24, 2009, the Texas Service Center Director denied his Form I-539. That same day, a Notice to Appear was issued for the respondent by an Assistant Center Director in Dallas, Texas and a copy of the notice was sent to him by regular mail. The respondent also submitted a photocopy of an envelope listing a return address from the "Texas Service Center – NTA UNIT" in Dallas, Texas with an image of a label affixed to the envelope indicating "RETURN TO SENDER ATTEMPTED – NOT KNOWN UNABLE TO FORWARD." The envelope was postmarked the day after the Notice to Appear was issued. Moreover, the DHS does not meaningfully contest the respondent's claim that the Notice to Appear was returned to the DHS and a hearing notice that was sent by the Immigration Court to the address listed on the Notice to Appear was also returned and is contained in the record.

Because the record supports the respondent's claim that the Notice to Appear was returned to the DHS, the respondent cannot be charged with receiving adequate notice under *Matter of G-Y-R-*, 23 I&N Dec. 181. We therefore find that proceedings should be reopened pursuant to our decisions in *Matter of Anyelo*, 25 I&N Dec. 337, and *Matter of G-Y-R-*, 23 I&N Dec. 181.

Accordingly, the following orders shall be entered.

ORDER: The appeal is sustained, and the in absentia removal order is rescinded.

FURTHER ORDER: The proceedings are reopened, and the record is remanded to the Immigration Court 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
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

IN THE MATTER OF:	)	**In Removal Proceedings**
	)	
PATEL, Kamleshkumar G.	)	**File No. A# 087-385-865**
	)	
Respondent	)	
	)	

APPLICATION: Respondent's Motion to Reopen and Stay Removal

APPEARANCES

ON BEHALF OF THE RESPONDENT:

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ON BEHALF OF THE GOVERNMENT:

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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

Kamleshkumar Patel ("Respondent") is an adult male native and citizen of India. He entered the United States with an H2-B nonimmigrant visa, which was later changed to a B-2 nonimmigrant visa, with authorization to remain until December 15, 2006. Respondent remained in the United States beyond December 15, 2006 without authorization.

On December 15, 2006, Respondent filed a Form I-539, Application to Extend/Change Nonimmigrant Status ("change of status application") with the United States Citizenship and Immigration Service ("USCIS"). Exh. 38. In this application, Respondent requested that his status be changed to that of a B-1 business visitor with authorization to remain in the United States until June 15, 2007. Id.

On March 24, 2009, USCIS denied Respondent's change of status application and the Department of Homeland Security ("Department") issued Respondent a Notice to Appear ("NTA") charging Respondent as removable under section 237(a)(1)(B) of the Immigration and Nationality Act ("INA" or "Act"), in that after admission as a nonimmigrant under section 101(a)(15) of the Act, Respondent remained in the United States for a time longer than permitted, in violation of the Act or any other law of the United States. Exh. 18. On the same date, the Department sent a copy of the NTA to Respondent by regular mail to his last known address of "250 BEVERLY ST Apt 108, HINESVILLE GEORGIA 31313." Id.

On May 7, 2009, the Court issued and sent a Notice of Hearing to Respondent via regular mail to his last known address. Exh. 28. The Notice of Hearing indicated that Respondent was scheduled for a master calendar hearing before the Court on August 27, 2009. Id. Respondent failed to appear before the Court on August 27, 2009, and was ordered removed to India *in absentia*.

On November 5, 2014, Respondent filed a Motion to Reopen and Stay Removal, arguing that he did not receive proper notice of the hearing and requesting *sua sponte* reopening in the alternative. The Department filed an opposition to the Motion on January 5, 2015. For the reasons set forth below, the Court will deny Respondent's Motion to Reopen and Stay Removal.

II. STATEMENT OF LAW

All motions to reopen must "be supported by affidavits and other evidentiary material." 8 C.F.R. § 1003.23(b)(3). Only one motion to reopen may be filed by the alien. 8 C.F.R. § 1003.23(b)(4)(ii).

Generally, motions to reopen for the purpose of rescinding an *in absentia* removal order must be filed within 180 days after the date of the removal order and demonstrate exceptional circumstances which caused the failure to appear. See INA § 240(b)(5)(C)(i); 8 C.F.R. § 1003.23(b)(4)(ii). However, motions to reopen for the purpose of rescinding an *in absentia* removal order may be filed at any time, including after the 180-day deadline, if the alien argues that he did not receive notice of the hearing. See INA § 240(b)(5)(C)(ii); 8 C.F.R. § 1003.23(b)(4)(ii). As the present case presents a claim of insufficient notice, the Court will consider the relevant statutes and case law relating to the question of proper notice for the purpose of an *in absentia* removal in immigration proceedings.

Where a NTA or Notice of Hearing is properly addressed and sent by regular mail according to normal office procedures, there is a presumption of delivery. Matter of M-R-A-, 24 I&N Dec. 665 (BIA 2008). An Immigration Judge may consider various factors to determine whether a respondent has rebutted the weaker presumption of delivery when notice is sent via regular mail, including, but not limited to, the following: (1) affidavits from the alien and other individuals with knowledge of facts relevant to receipt of notice; (2) whether the alien exercised due diligence upon learning of the *in absentia* removal order; (3) any prior applications for immigration relief that would indicate an incentive to appear at the removal hearing; (4) the alien's attendance at earlier immigration hearings; and (5) any other circumstances indicating possible nonreceipt of notice. Matter of M-R-A-, 24 I&N Dec. at 674.

In evaluating whether notice was sent to the proper address, the relevant statute states that there is sufficient notice to hold an *in absentia* removal hearing where written notice is "provided to the most recent address provided under section 239(a)(1)(F)." INA § 240(b)(5). In 2001, the Board of Immigration Appeals ("Board") in Matter of G-Y-R-, 23 I&N Dec. 181, 186 (BIA 2001), interpreted this statute by stating:

> [A]n address can be a section 239(a)(1)(F) address *only* if the alien has first been informed of the particular statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Because that information is first communicated in the Notice to Appear, the alien must receive the Notice to Appear before he or she can 'provide' an address in accordance with section 239(a)(1)(F) of the Act. In cases where the Service uses the mail to deliver the Notice to Appear to the alien, the 'last address' or the 'most recent address' provided by the alien 'in accordance with subsection (a)(1)(F)' will necessarily be an address arising from the alien's receipt of the advisals contained in the Notice to Appear.

Id. at 187-88. The Board acknowledged that it did not mean that an alien "must personally receive, read, and understand the Notice to Appear for the notice requirements to be satisfied" and that an alien could be properly charged with receiving notice, even though he did not personally see the document, if the NTA is mailed to and reaches the correct address, but does not reach the alien through some failure in the internal workings of the household. Id.

Soon after the Board decided Matter of G-Y-R-, the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") issued a decision in Dominguez v. U.S. Atty. Gen., 284 F.3d 1258, 1260 (11th Cir. 2002), in which it held that "[f]ailing to provide the INS with a change of address will preclude the alien from claiming that the INS did not provide him or her with notice of a hearing. See [INA § 240(b)(5)] ('No written notice shall be required ... if the alien has failed to provide the address required under section [239](a)(1)(F) of this title')." The Eleventh Circuit in Dominguez specifically noted that under INA § 265(a) "it is the alien's statutory duty to notify the government of each change of address within ten days of the date of that change." Id. Moreover, it held that "[t]he statute clearly provides that notice to the alien at the most recent address provided by the alien is sufficient notice, and that there can be an *in absentia* removal after such notice." Id.

Following the Eleventh Circuit's decision in Dominguez, the Board declined to apply Matter of G-Y-R- to cases arising in the Eleventh Circuit until the publication of Matter of Anyelo, 25 I&N Dec. 337 (BIA 2010), in 2010. In Matter of Anyelo, the Board distinguished the Eleventh Circuit's ruling in Dominguez by stating that "the Eleventh's Circuit's decision in Dominguez was primarily devoted to the issue of due process rather than statutory interpretation." Matter of Anyelo, 25 I&N Dec. at 338. Although the Board acknowledged that Dominguez stated that the statute clearly provided that notice to the alien at the most recent address provided by the alien is sufficient notice the Board ultimately held that Dominguez and Matter of G-Y-R- were not inconsistent. Id. at 339. The Board further stated that it would begin to apply its decision in Matter of G-Y-R- to cases arising in the Eleventh Circuit. Id.

The Eleventh Circuit has not issued any published decisions addressing the compatibility of Matter of G-Y-R- and Dominguez. However, in an unpublished opinion the Eleventh Circuit has held that "to the extent that Dominguez and [Matter of] G-Y-R contradict each other, Dominguez, not [Matter of] G-Y-R, is binding." Gonzalez v. U.S. Attorney Gen., 154 F. App'x 169, 173 (11th Cir. 2005). Such a holding from the Eleventh Circuit demonstrates that it finds some inconsistency exists between the two cases. Furthermore, the Eleventh Circuit has

reiterated in unpublished decisions the statement it made in Dominguez that "because [the respondent] did not provide a change of address, he is precluded from claiming that he did not receive notice" when the NTA was sent to the last known address of the respondent, but not the respondent's allegedly current address. Barrios v. U.S. Atty. Gen., 457 F. App'x 831, 833 (11th Cir. 2012); see also Qi Hu Sun v. U.S. Atty. Gen., 543 F. App'x 987, 991 (11th Cir. 2013); Gonzalez, 154 F. App'x 169, 172; Voloti v. U.S. Atty. Gen., 134 F. App'x 377, 378-79 (11th Cir. 2005) ("The notice specified in [INA § 239(a)] is effective if sent to the 'last address provided by the alien.' [INA § 239(c)]. An alien has an affirmative duty to provide the government with a correct address. [INA § 265(a)]. Thus, '[t]he statute clearly provides that notice to the alien at the most recent address provided by the alien is sufficient notice, and that there can be an in absentia removal after such notice.' [citing Dominguez]"). Moreover, the Court notes that in Barrios the Eleventh Circuit found that the Department mailed the NTA to the last INA § 239(a)(1)(F) address provided by the respondent when the NTA was sent to the most recent address the respondent provided in writing to the Department and the respondent did not contend he informed the Department of a change in his address. Barrios, 457 F. App'x at 831, 833.[1] Ultimately, the Court finds the Eleventh Circuit's holding in Dominguez clearly precludes a respondent from claiming improper notice of an *in absentia* hearing when a NTA was properly sent to the last address he provided to the Department, but did not reach the respondent only because he failed to file a change of address as statutorily required under INA § 265(a). Dominguez, 284 F.3d at 1260.

III. DISCUSSION

a. Respondent has not overcome the presumption of proper delivery of his NTA.

Respondent's Motion to Reopen is based on his alleged lack of notice of his August 27, 2009 hearing. In his affidavit, Respondent claimed not to have received his NTA or his Notice of Hearing. See Resp. Mot. to Reopen at Tab 7. However, after consideration of the factors laid out in Matter of M-R-A-, 24 I&N Dec. at 674, the Court finds Respondent has failed to overcome the presumption of proper delivery. First, the Court notes that the affidavit allegedly from Respondent contained in the Motion to Reopen is unsigned and therefore is ineffective in assisting Respondent in overcoming the presumption of proper delivery. Id.[2]

Furthermore, Respondent alleges that the NTA was returned to sender as undeliverable and includes in his Motion a copy of the envelope which allegedly contained Respondent's NTA and was returned to the Department as undeliverable. Id. at Tab 4. However, the Court notes that the copy of Respondent's NTA included in his Motion is stamped as received by the Department of Justice on March 30, 2009. Id. at Tab 5. This stamp is inconsistent with the postmarks on the copy of the envelope stamped returned to sender included in Respondent's Motion. Id. at Tab 4.

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[1] See also Belle v. U.S. Attorney Gen., 297 F. App'x 846, 849 (11th Cir. 2008) ("Since the notice to appear was mailed to [the respondent's] last known address and he failed to provide the DHS or the Immigration Court with a change of address, [the respondent] was precluded from claiming that officials did not provide him with notice of a hearing. Thus, [the respondent] could not demonstrate that he did not receive notice in accordance with [INA § 239(a)(1) or (2)].").

[2] As all motions to reopen are required to include support from affidavits and other evidentiary material, the Court also finds Respondent's Motion deficient in its failure to include a signed affidavit from Respondent. See 8 C.F.R. § 1003.23(b)(3).

The envelope was postmarked on March 25, 2009, but returned to sender on April 10, 2009. Id. Thus, the NTA appears to have been stamped as received by the Department of Justice during the time it was also allegedly in transit with the U.S. Postal Service. Additionally, the NTA contained in the record of proceedings is stamped as received by the Department of Justice on April 8, 2009. Exh. 18. For these reasons, the Court cannot conclude that the NTA at Tab 4 is the same NTA which was sent in the envelope at Tab 5. Moreover, while the copy of the envelope which was returned to sender has Respondent's A number hand written on it, there is no explanation of when the A number was written on the envelope or by whom it was written and nothing else connects the copy of the envelope to Respondent. Resp. Mot. to Reopen at Tab 4. Ultimately, the documentation provided to the Court in Tabs 4 and 5 of Respondent's Motion creates more questions than it does answers and there is insufficient explanation of the above mentioned inconsistencies for the Court to find that documentation, by itself, establishes that Respondent's NTA was not properly delivered.

Similarly, although Respondent alleged that he never received his NTA or Notice of Hearing, he never claimed that he failed to receive his *in absentia* removal order and there is nothing in the record of proceedings indicating that the *in absentia* removal order did not reach its intended destination.[3] Also, the Court finds it highly relevant to the determination of whether Respondent has overcome the presumption of proper delivery that he did not have any incentive to appear at his August 27, 2009 hearing because he did not have any pending applications for relief. The Court notes that Respondent's most recent application for change of status was filed on the final day of his previously authorized status, December 15, 2006, and requested authorization to remain in the United States only until June 15, 2007. Exh. 38. Therefore, the Court finds Respondent was aware of the potential for his status to expire and the fact that even if his most recent application for change of status was granted he would only be authorized to remain in the United States until June 15, 2007.

The fact that Respondent knew or should have known that he was no longer in lawful status after June 15, 2007 is relevant not only to his lack of any incentive to appear, but also to his failure to demonstrate that he acted with due diligence in pursuing his case. For this reason, the Court finds it disingenuous for Respondent to imply that it was only after he was told at a Bank of America that his Social Security Number was no longer valid that he became aware his application for change of status was denied in 2009. See Resp. Mot. to Reopen at Tab 7. Additionally, Respondent's vagueness in his affidavit and the information he selectively provided to the Court prevents the Court from determining when Respondent became aware of his *in absentia* removal order. However, it is undeniable that Respondent's failure to update his address or inquire into his immigration case with the Department for eight (8) years coupled with his sudden action to reopen his proceedings only after he became eligible for relief cannot

[3] The Court notes that Respondent's affidavit alleged that his uncle was living at 305 Beverly St. Apt. 108, Hinesville, GA 31313 until an unspecified date in 2009 and that Respondent would periodically call his uncle to check whether he had received any mail. Resp. Mot. to Reopen at Tab 7. Therefore, the Court finds Respondent's failure to allege that he did not receive the *in absentia* removal order sent on August 28, 2009 to the 305 Beverly St. address and the fact that the *in absentia* order was not returned as undeliverable are both relevant to determining whether Respondent has overcome the presumption of proper delivery. It is Respondent's burden to establish eligibility for the reopening of his case and the Court will not speculate to fill in the self-serving gaps in Respondent's claim created when Respondent failed to provide an exact date that his uncle allegedly moved from the 305 Beverly St. address.

constitute due diligence. In conclusion, considering the lack of a properly signed affidavit from Respondent, the unexplained inconsistency between the return to sender envelope and the NTA included in Respondent's Motion, the lack of any claim that the *in absentia* order was not delivered, Respondent's total lack of incentive to appear at his August 27, 2009 hearing, and Respondent's lack of due diligence in pursuing his immigration case, the Court finds Respondent failed to overcome the presumption of proper delivery of the NTA. Matter of M-R-A-, 24 I&N Dec. at 674.

b. Respondent's NTA and Notice of Hearing were both properly mailed to the last address Respondent provided to the Department.

The obligation that certain aliens inform the Government of a change of address within ten days of such change has been a bedrock requirement of the immigration system since the passage of the Immigration and Nationality Act of 1952 and has remained in effect consistently since that time. See Immigration and Nationality Act of 1952, Title II, ch. 7, § 265, 66 Stat. 225 (June 27, 1952) (currently codified as INA § 265(a)). If an alien does not fulfill his obligation to report his address change, notice of the hearing is not required pursuant to section 240(b)(5) of the Act. Additionally, service by mail is sufficient if the record contains proof of attempted delivery to the last address provided by the alien in accordance with section 239(a)(1)(F) of the Act. INA § 239(c). Finally, the requirements for proper notice of the NTA specified in INA §§ 239(a), (c) are met if the NTA is sent to the last address provided by the alien. Dominguez, 284 F.3d at 1260.

Respondent admitted that the last address he provided to the Department was the address listed on his change of status application filed on December 15, 2006, which was "350 Beverly Street, Apt 108, Hinesville GA 31313." Exh. 38; Resp. Mot. to Reopen at Tab 7. He alleged that this was the address of his uncle, with whom he was living at the time his most recent change of status application was filed.[4] See Resp. Mot. to Reopen at Tab 7. However, he further alleged that: "[w]hile my application was pending I had to move to various places because I had no fixed place to live or support myself. So I could not change my address with USCIS, Homeland Security. I was moving from one place to another because I was looking for jobs. I did not have a permanent address." Id. Respondent argues that he "did not receive the Notice to Appear with its accompanying obligations and explanations of the consequences of failing to comply with those obligations." Resp. Mot. to Reopen at 8. However, it is undisputed that the Department sent Respondent notice of his removal proceedings by NTA and Notice of Hearing to the last address he provided to the Department. Furthermore, Respondent never alleged that he filed a change of address with the Department. Consequently, following the clear intent of the Eleventh Circuit in Dominguez, the Court finds that service of the NTA to the last address Respondent provided to the Department constitutes proper notice sufficient for his *in absentia* removal and Respondent's failure to update the Department with his current address precludes him from arguing lack of notice. Dominguez, 284 F.3d at 1260.

[4] The Court notes that Respondent stated in his change of status application that he would be living with an individual named Mr. Ganshyam Patel during the period he was requesting for his visa extension. Exh. 38. However, in the affidavit included with his Motion, Respondent alleged that he was residing with his "Uncle Chirag Patel" during that same time. Respondent provided no explanation for this inconsistency.

The Court further notes that Respondent's own admissions and pattern of conduct indicate that he was either aware or willfully ignorant of the requirement to notify the Department of his change of address. Respondent's claim that he was unable to remain at the address he provided to the Department because he was working without authorization in violation of the law is unacceptable. Additionally, Respondent's statements in his affidavit that he had no choice but to travel to find work directly contradict the assurance he provided to the Department in his change of status application that he would "be staying with Mr. Ganshyam Patel who will be supporting [Respondent] financially up to the amount of $2000.00 a month and providing [his] shelter and food." Exh. 38. Ultimately, it is clear that Respondent maintained contact with the Department only for so long as it suited his purposes. The Court finds it could not have been the intent of Congress to reward aliens who enter the United States, intentionally relocate from the addresses they were required to provide to the Department upon entering, fail to inform the Department of the change of address in order to avoid detection and removal during the time necessary to ensure some form of relief, and then request reopening of their cases years later to gain lawful status for which they recently became eligible.

c. The Court will decline to exercise its sua sponte *authority to reopen Respondent's case.*

Respondent also requested that the Court exercise its *sua sponte* authority to reopen his case. The Court may *sua sponte* reopen a case over which it has jurisdiction at any time. 8 C.F.R. § 1003.23(b)(1); see also Matter of J-J-, 21 I&N Dec. 976 (BIA 1997). However, such power should only be exercised in "exceptional situations." Matter of J-J-, 21 I&N Dec. at 984. The respondent has the burden to show that an exceptional situation exists. Matter of Beckford, 22 I&N Dec. 1216, 1218-19 (BIA 2000).

The Court finds that an exceptional situation has not been established in the present case. The Court's *sua sponte* authority is reserved to prevent miscarriages of justice and is "not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing may result in hardship." Matter of J-J-, 21 I&N Dec. at 984. In the present case, Respondent avoided receiving his NTA despite the fact that he knew or should have known that his lawful status expired at the latest on June 15, 2007. The Court notes that although Respondent's status actually expired six (6) months earlier on December 15, 2006, even giving Respondent the benefit of the doubt, there is no conceivable way that Respondent, an educated individual with prior experience dealing with the immigration system, could have believed that he was in lawful status after June 15, 2007. The fact that Respondent avoided encountering the Department between 2006 and 2014, until Respondent married a United States citizen is a direct result of his violation of law. INA § 265(a). Consequently, Respondent's actions are best described as an attempt to circumvent the regulations and certainly do not present an exceptional situation justifying a favorable exercise of discretion. Id. For the forgoing reasons, the Court will deny Respondent's request to reopen his case *sua sponte*.

d. The Court will deny Respondent's Motion to Stay Removal as Moot.

As the Court denied Respondent's Motion to Reopen, the Court will also deny Respondent's Motion to Stay Removal as moot. See 8 C.F.R. § 1003.23(b)(1)(v). In light of the foregoing, the Court will enter the following orders:

ORDERS

It is ordered that:

Respondent's Motion to Reopen is hereby **DENIED**;

It is further ordered that:

Respondent's Motion to Stay Removal is hereby **DENIED**.

11/2/15
Date

Madeline García
United States Immigration Judge
Atlanta, Georgia