



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

P [REDACTED], A [REDACTED]
[REDACTED]
[REDACTED]

DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324

Name: P [REDACTED], A [REDACTED]

A [REDACTED] 411

Date of this notice: 10/24/2017

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.
Kelly, Edward F.
Kendall Clark, Molly

Userteam: Docket

For more unpublished BIA decisions, visit
www.irac.net/unpublished/index

Falls Church, Virginia 22041

File: [REDACTED] 411 – Dallas, TX

Date:

OCT 24 2017

In re: A [REDACTED] P [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The respondent, a native and citizen of Albania, appeals from the Immigration Judge's decision dated April 3, 2017, denying the respondent's motion to reopen to rescind the in absentia removal order and denying the respondent's motion to change venue. The Department of Homeland Security ("DHS") has not opposed the respondent's appeal. The appeal will be sustained.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was ordered removed in absentia when he failed to appear for his scheduled hearing in Dallas, Texas, on February 13, 2017. On March 9, 2017, he filed a motion to reopen to rescind the in absentia order. Pursuant to sections 240(b)(5)(C)(i) and (ii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(b)(5)(C)(i) and (ii), an in absentia removal order may be rescinded only (1) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances, or (2) upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in accordance with sections 239(a)(1) or (2) of the Act.

There is no issue regarding whether the respondent had proper notice of his hearing. Instead, the respondent argues that "exceptional circumstances" prevented him from appearing on the day of his scheduled hearing. See section 240(b)(5)(C)(i) of the Act.

In this case, the respondent was living in Michigan at the time of the hearing and argues that he was unable to travel to his hearing in Texas. The record reflects that on December 12, 2016, nearly 2 months before the in absentia hearing, the respondent had filed a motion to change venue to Michigan based on financial reasons, his difficulty in finding a Texas attorney, and his mental health issues. The Immigration Judge denied the motion on January 9, 2017, for a lack of corroboration.

On January 25, 2017, the respondent filed a motion to reconsider this denial with the Immigration Judge. In support of the motion, the respondent submitted a letter, dated January 20, 2017, from the respondent's psychiatrist, who had been treating the respondent for nearly a year. In that letter, the psychiatrist explains that the respondent suffers from Post-Traumatic Stress

Disorder and anxiety disorder, and that the respondent's "emotional problems are so severe that he is not capable of coping with the stresses of traveling to Texas to participate in his Immigration court case." The psychiatrist goes on to state that if the respondent leaves his familiar surroundings and support system in Michigan, he would likely experience panic attacks, and he could become "so agitated that he will think and act irrationally to the extent that he will not be able to effectively plan and communicate the words and ideas needed to effectively answer questions and express his thoughts during the court procedure." The psychiatrist adds his opinion that it is "very likely that [the respondent] will be overwhelmed to the severity that he will need to be hospitalized in a mental health facility for his own protection."

The Immigration Judge denied this motion to reconsider in a summary order, dated February 6, 2017, stating only that "the Court finds no persuasive argument for the Court to reconsider its earlier denial." When the respondent failed to appear for his hearing in Texas on February 13, 2017, the Immigration Judge ordered him removed in absentia.

In his motion to reopen to rescind the in absentia order, the respondent argued that his mental health issues constitute exceptional circumstances that prevented him from appearing for his hearing. The term "exceptional circumstances" refers to exceptional circumstances beyond the control of the alien, such as serious illness of the alien or death of an immediate relative, but not including less compelling circumstances. Section 240(e)(1) of the Act.

The Immigration Judge denied the motion to reopen in a decision dated April 3, 2017, finding that the respondent's mental health issues did not constitute exceptional circumstances because: (1) the respondent already asserted his mental health as a basis for his prior change of venue motion; and (2) the respondent asserted other reasons in support of his prior change of venue motions, such as financial hardship (IJ at 2).¹

However, the fact that the respondent raised his psychiatric diagnosis in his change of venue motion only adds credence to his claim that his mental health issues impeded his ability to appear for his hearing in Texas. Moreover, the fact that the respondent set forth additional reasons for his change of venue request has no bearing on whether the respondent's psychiatric disorders also impeded his ability to appear for his hearing.

Given the evidence presented from the respondent's psychiatrist, we agree with the respondent that he has established that exceptional circumstances, namely the "serious illness of the alien" which was beyond his control, prevented him from appearing for his hearing in Texas. The respondent has also established that a change of venue is warranted.

Accordingly, the following orders will be entered.

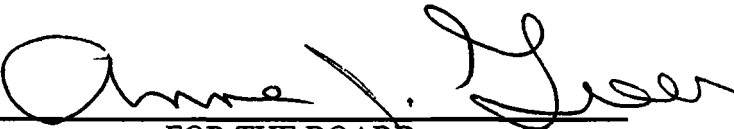
ORDER: The appeal is sustained.

¹ To the extent that the Immigration Judge also denied the motion based on a lack of jurisdiction because the respondent did not file a fee with his motion, no such fee was required. Immigration Court Practice Manual, Ch. 3.4(b)(ii) (June 26, 2017) (filing fee not required for motions to reopen in absentia proceedings).

FURTHER ORDER: The Immigration Judge's April 3, 2017, decision denying the respondent's motion to reopen to rescind the in absentia removal order is hereby vacated, and the in absentia order of removal is rescinded.

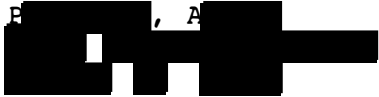
FURTHER ORDER: Proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.


FURTHER ORDER: The request to change venue is granted, and venue is changed from Dallas, Texas, to Detroit, Michigan



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242


IN THE MATTER OF
PRENDASHI, ANDUEN

FILE A -411

DATE: Apr 10, 2017

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:

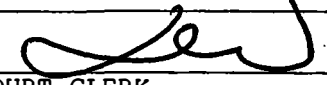
BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

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
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

X OTHER:

Order for Change of Venue & to Re-open (David)


COURT CLERK
IMMIGRATION COURT

FF

CC: PEGGY PRICE
125 E. HWY 114, STE 500
IRVING, TX, 75062

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DALLAS, TEXAS**

IN THE MATTER OF:)
) IN REMOVAL PROCEEDINGS
P [REDACTED], [REDACTED])
) A [REDACTED] 411
RESPONDENT)

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA” or “Act”), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

APPLICATIONS: Motion to Reopen; Motion to Change Venue

ON BEHALF OF RESPONDENT:

Anduen Prendashi
47395 Star Valley Drive
Macomb, Michigan 48044

**ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:**

Paul B. Hunker III, Esq.
Chief Counsel – DHS/ICE
125 E. John Carpenter Freeway, Suite 500
Irving, TX 75062

DECISION OF THE IMMIGRATION JUDGE

This matter is before the Court pursuant to Respondent’s motions to reopen and to change venue filed on March 9, 2017. Respondent asserts exceptional circumstances to explain his failure to appear for his February 13, 2017 hearing where he was ordered removed *in absentia*. The Court will DENY Respondent’s motion as set forth.

First, the Court does not have jurisdiction to consider Respondent’s motion as it does not include the appropriate filing fee or a request for a fee waiver as required by the regulations. *See* 8 C.F.R. § 1003.23(b)(1)(ii). The Court finds no applicable exceptions to the fee filing and receipt. *See* 8 C.F.R. § 1003.24(b)(2).

Second, even if the Court had jurisdiction, it finds that Respondent has not demonstrated exceptional circumstances excusing his failure to appear. An *in absentia* order may be rescinded upon a motion to reopen filed 180 days after an administratively final order of removal is entered if the Respondent shows “exceptional circumstances” leading to his absence from the hearing. INA § 240(b)(5)(C)(i); 8 C.F.R. § 1003.23(b)(4)(iii). “Exceptional circumstances” are circumstances beyond the control of the alien, including “battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances.” INA § 240(e)(1). This “is a difficult burden to meet.” *Magdaleno de Morales v. INS*, 116 F.3d 145, 148 (5th Cir. 1997). The Court must look to the “totality of the circumstances” in deciding whether exceptional circumstances exist. *In re W-F-*, 21 I&N Dec. 503, 509 (BIA 1996).

In this case, the Court is not convinced that Respondent’s mental health concerns are a sufficient basis to excuse his failure to appear, particularly as this is the same explanation offered by Respondent in support of a previous motion to change venue. Respondent resubmitted the statement from Dr. Katz who discussed Respondent’s mental health and how traveling to Dallas would affect his health. While this could be a contributing factor, previous evidence in the record suggests an alternative explanation that traveling to Dallas is a financial hardship. Thus, the Court finds that Respondent has not established an exceptional circumstance to excuse his failure to appear and his motion will be denied on this basis.

Finally, the Court declines to exercise its *sua sponte* authority to reopen as this case does not present a “truly exceptional situation” where the interests of justice would be served. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

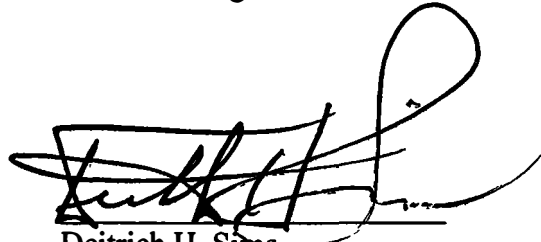
Without a basis to reopen proceedings, the Court will deny Respondent's motion to change venue as moot. Accordingly, the following orders are entered:

ORDER

IT IS HEREBY ORDERED that Respondent's Motion to Reopen is **DENIED**.

IT IS FINALLY ORDERED that Respondent's Motion to Change Venue is **DENIED**.

Date: 3rd day of April, 2017
Dallas, TX



Deitrich H. Sims
Immigration Judge