



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*

**Barnett, Maria A., Esq.
Law Offices of Maria Barnett
78-05 Roosevelt Avenue
Jackson Heights, NY 11372**

**DHS/ICE Office of Chief Counsel - NYC
26 Federal Plaza, Room 1130
New York, NY 10278**

Name: GAMBOA,ALEX

A075-924-620

Date of this notice: 2/22/2011

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:
Guendelsberger, John
King, Carol
King, Jean C.

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Falls Church, Virginia 22041

File: A075 924 620 - New York, NY

Date:

FEB 22 2011

In re: ALEX GAMBOA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Maria A. Barnett, Esquire

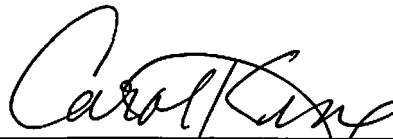
ON BEHALF OF DHS: Brian J. Kennedy
Assistant Chief Counsel

APPLICATION: Reconsideration

The respondent is a native and citizen of Colombia and appeals from an Immigration Judge's decision dated May 4, 2010, denying his motion to reopen proceedings. The appeal will be sustained and the record will be remanded.

On review, in light of the totality of circumstances presented in this case we will reopen proceedings and allow the respondents another opportunity to appear for a hearing. The respondent has submitted evidence consisting of a sworn affidavit in which he states that he lived at the address to which the Notice to Appear and notice for his December 3, 2003, hearing were sent, yet he did not receive either notice. He further indicated that prior to and subsequent to the October 8, 2003, notice for his hearing, he experienced difficulty with his mail delivery and that on several occasions his mail was incorrectly delivered to his neighbors. Moreover, the respondent appears to be eligible for adjustment of status. In view of the totality of circumstances presented in this case, proceedings will be reopened, the in absentia order will be rescinded, and the case will be remanded. *See, e.g. Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008)

ORDER: The appeal is sustained, proceedings are reopened, the in absentia order is rescinded, and the case is remanded to the Immigration Judge for further proceedings consistent with the above opinion.



FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
Executive Office for Immigration Review
Office of the Immigration Judge

In the Matter of:

Case No.: A 075-924-620

Gambao, Alex

Docket: _____

RESPONDENT/APPLICANT

IN Removal PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of respondent's/applicant's

- ☒ Motion to Reconsider an Immigration Judge's decision
☐ Motion to Reopen proceedings

filed in the above entitled matter, it is **HEREBY ORDERED** that the motion

☐ be granted.

☒ be denied for the reasons indicated in the attached decision. There was no legal error

in denying respondent's motion under Matter of M-R-A, 24 J+I
Dec. 665 (BIA, 2008). The only "evidence" to rebut the
presumption of mail delivery is the respondent's
affidavit that he did not receive
two separate hearing notices
mailed to his correct address.
Moreover, he had no incentive
to appear in court in 2003 as
his prior wife's petition was
denied in 2002. The respondent
waited seven years to file a
motion to reopen, and only after
he married another U.S. citizen.
His case is not governed by
matter of C-R-C, 24 J+N Dec.
77 (BIA, 2008).

Sarah M. Burr
Immigration Judge

Date: May 4, 2010