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

TORRES, BRENNA
BRENNA TORRES, ESQ.
139 FULTON STREET
SUITE 508
NEW YORK, NY 10038

DHS/ICE Office of Chief Counsel - NEW
970 Broad Street, Room 1104B
Newark, NJ 07102

Name: ALTAMIRANO-ALTAMIRANO, SI... **A 071-488-092**

Date of this notice: 5/4/2016

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:
Mann, Ana
Adkins-Blanch, Charles K.
O'Leary, Brian M.

schwarzA
Userteam: Docket

File: A071 488 092 – Newark, NJ

Date: MAY - 4 2016

In re: SILVIA ALTAMIRANO-ALTAMIRANO

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brenna Torres, Esquire

APPLICATION: Reopening

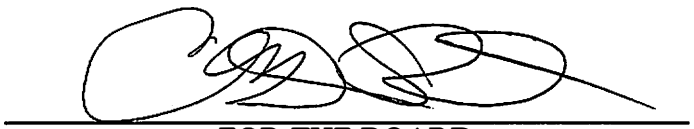
The respondent has appealed the Immigration Judge's decision dated October 19, 2015, denying her motion to reopen. An Immigration Judge had previously ordered the respondent deported in absentia for her failure to appear for the hearing on August 10, 1993. We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii). The record will be remanded to the Immigration Judge.

Initially, we note that the respondent's deportation proceedings were conducted in absentia under section 242B of the Immigration and Nationality Act, 8 U.S.C. § 1252b. Section 242B applies where service of the Order to Show Cause occurred after June 13, 1992, but prior to April 1, 1997. An order of deportation issued following proceedings conducted in absentia pursuant to section 242B of the Act may be rescinded only upon a motion to reopen which demonstrates that the alien failed to appear because of exceptional circumstances, because he or she did not receive proper notice of the time and place of the hearing, or because he or she was in federal or state custody and failed to appear through no fault of his or her own. *See Matter of Grijalva*, 21 I&N Dec. 27 (BIA 1995); *Matter of Gonzalez-Lopez*, 20 I&N Dec. 644 (BIA 1993). Furthermore, an alien may file more than one motion to reopen regarding an in absentia order in deportation proceedings, as the time and numerical limitations set forth in 8 C.F.R. § 1003.23(b)(1) do not apply to a motion to reopen filed pursuant to 8 C.F.R. § 1003.23(b)(4)(iii)(A). *See* 8 C.F.R. § 1003.23(b)(4)(iii)(D).

Upon de novo review, we find it appropriate to remand the record to the Immigration Judge for the entry of a new decision. It appears that the Immigration Judge applied the legal standards governing rescission of an in absentia order entered in removal proceedings under section 240 of the Act in adjudicating the respondent's motion to reopen. Inasmuch as the respondent was placed in deportation proceedings on October 21, 1992, the rescission of her in absentia order is governed by section 242B of the Act. The Immigration Judge erroneously denied the respondent's second motion to reopen as numerically barred, and construed her third motion to reopen as a motion to reconsider. The respondent provides both submissions and supporting evidence on appeal, which we deem an additional motion to reopen. In light of the foregoing, we will remand the record for further consideration of the merits of the respondent's claims and the entry of a new decision. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding ability on appeal); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002).

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing decision and for the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
NEWARK, NEW JERSEY

IN THE MATTER OF:	*	
	*	
ALTAMIRANO-ALTAMIRANO, Silvia	*	CASE NO. A071 488 092
	*	
RESPONDENT	*	

IN DEPORTATION PROCEEDINGS
AT NEWARK, NEW JERSEY

DECISION ON RESPONDENT'S MOTION FILED ON MAY 12, 2015

The Respondent filed, on May 12, 2015, her third Motion to Reopen, styled a "renewed" Motion to Reopen and Rescind. It may be captioned as "renewed" but it requests a third decision from the Immigration Judge on Respondent's various Motions to Reopen. It is construed as a Motion to Reconsider.

Is the Motion filed in May, 2015 Frivolous?

A Motion to Reopen that has already been decided cannot be "renewed" before the same Immigration Judge. Respondent appears to have filed this latest effort solely as a means to enlarge the appeal deadline in this case because no appeal was timely filed. Whether such conduct by counsel – which borders on the frivolous -- is to be tolerated is something that this court will not explore further. But there is no other purpose that is apparently served.

The Motion to Reconsider is Untimely Filed

A Motion to Reconsider must be filed within 30 days of the court's decision in this case. This Motion was filed incorrectly on March 25, 2015. Thus, the Motion is not timely because this court issued its decision on January 28, 2015 which was served on February 4, 2015. The Motion, if a Motion to Reconsider, is not timely.

No New Argument to Reopen Based on Lack of Notice or Based on Exceptional Circumstance

On January 28, 2015, this court issued its decision, from which Respondent filed no appeal. This court previously detailed that Respondent's Second Motion to Reopen urged the same argument as that previously denied by the previous Immigration Judge in his written decision signed on August 10, 1993.

The fact that the DHS has not initiated Respondent's deportation is something that is diminished by the lack of evidence that OPLA Office of Chief Counsel jointly moves to reopen this case.

No Error of Law or Fact Presented

Even had it been timely, the Motion does not establish that there was an error of fact or of law in the denial decision issued in January, 2015. Even after reviewing the contents of the Record of Proceeding and all Motions filed by the Respondent, this court still has no evidence that Respondent is eligible to apply to adjust status pursuant to Section 245(i) of the Immigration and Nationality Act, which she would need to overcome her lack of an admission or parole.

ORDER

IT IS ORDERED that Respondent's Motion filed on May 12, 2015 is DENIED.
SIGNED on October 19, 2015.

ANNIE S. GARCY,
Immigration Judge