



U.S. Department of Justice

Executive Office for Immigration Review

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Name: LUCERO, YUWIKZA DORIS

A 076-534-637

Date of this notice: 2/24/2017

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

Userteam: Docket

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**LUCERO, YUWIKZA DORIS
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**DHS/ICE Office of Chief Counsel - MIA
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Miami, FL 33130**

Name: LUCERO, YUWIKZA DORIS

A 076-534-637

Date of this notice: 2/24/2017

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). 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 the decision.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

Userteam:

Falls Church, Virginia 22041

File: A076 534 637 – Miami, FL

Date:

FEB 24 2017

In re: YUWIKZA DORIS LUCERO

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Efrain Alsina, Esquire

APPLICATION: Reopening

On June 4, 2003, we dismissed the respondent's appeal from the Immigration Judge's December 12, 2001, decision denying the respondent's motion to reopen proceedings in which she was ordered removed in absentia. The respondent has filed another motion to reopen and rescind and contends that she did not receive proper notice of the hearing.¹ The record before us does not contain a brief in opposition from the Department of Homeland Security (DHS). The motion to reopen will be granted, the removal order will be rescinded, and the record will be remanded to the Immigration Judge for further proceedings.

Considering the totality of circumstances presented in the respondent's motion, which has not been opposed by DHS, we conclude that reopening is warranted under *Matter of G-Y-R*, 23 I&N Dec. 181 (BIA 2001). See also *Matter of Anyelo*, 25 I&N Dec. 337 (BIA 2010) (distinguishing *Dominguez v. United States Att'y Gen.*, 284 F.3d 1258 (11th Cir. 2002), and concluding that the holding in *Matter of G-Y-R* as to the notice required to authorize the entry of an in absentia order, is applicable to cases arising in the Eleventh Circuit). In *Matter of G-Y-R* we held that entry of an in absentia order of removal is inappropriate where the record reflects that the alien did not receive, and could not be charged with receiving, the Notice to Appear (NTA) that was served by mail at an address obtained from documents filed with the Service several years earlier. We concluded that section 239(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1), authorizes the entry of an in absentia order only after the respondent receives the warnings and advisals contained in the NTA.

In the case at bar, the record reflects that the NTA and notice for the respondent's hearing were mailed to the respondent at the address listed in her application for adjustment of status. However, the record, including the respondent's sworn statement, also indicates that the respondent did not receive the NTA or notice of her hearing because she no longer lived at that address when the NTA was issued and mailed (Motion to Reopen and Rescind at 2, 5, 7, Tab B; Board of Immigration Appeals Decision, dated June 4, 2003, at 1-2). Consequently, reopening and rescission of the in absentia removal order is warranted, and the record will be remanded to the Immigration Judge for further proceedings.

¹ The Board granted the respondent's request for a stay of removal pending consideration of this motion to reopen on March 30, 2016.

Accordingly, the following orders are entered.

ORDER: The motion to reopen is granted and the in absentia removal order is rescinded.

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



FOR THE BOARD