



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: LOMIBAO, RAMON OLANO

A 072-096-602

Date of this notice: 6/28/2019

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:
Malphrus, Garry D.
Noferi, Mark
Liebowitz, Ellen C**

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KS

Falls Church, Virginia 22041

File: A072-096-602 – San Francisco, CA

Date: **JUN 28 2019**

In re: Ramon Olano LOMIBAO

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David J. Kaufman, Esquire

APPLICATION: Reopening

This case is presently before us pursuant to the November 30, 2018, order of the United States Court of Appeals for the Ninth Circuit granting the government's unopposed motion to remand the case to the Board. On remand, the respondent filed a brief. The appeal will be sustained, and the proceedings reopened and remanded.

This matter was last before the Board on January 19, 2018, when we dismissed the respondent's appeal of the Immigration Judge's decision denying his motion to reopen his proceedings and rescind the in absentia order of deportation.

The respondent was ordered deported in absentia when he failed to appear for his proceedings on March 24, 1994. The respondent filed a motion to reopen on May 26, 2017. The respondent contends that he did not receive notice of his hearing. *See Andia v. Ashcroft*, 359 F.3d 1181 (9th Cir. 2004) (motion to reopen deportation proceedings based on alleged lack of notice may be filed at any time). The Immigration Judge found, and the record reflects, that the Order to Show Cause (OSC) was personally served at the Immigration and Naturalization Service ("INS") office on a partner of the respondent's former counsel, Ms. Carolyn Miyashita (IJ at 3; Exh. 1). *See* former section 242B(a)(1) of the Immigration and Nationality Act; 8 C.F.R. §§ 103.5a(a)(1), (a)(2). Ms. Miyashita had been retained to represent the respondent and his wife as part of an adjustment of status application before Immigration and Naturalization Service (INS), prior to him being placed into proceedings (Exh. 3). Upon receiving the Notice of Hearing, Ms. Miyashita attempted to contact the respondent regarding his hearing, but she did not have his current address nor had she had any recent contact with the respondent (Exh. 3). The respondent's former attorney sent the respondent a letter to the same address used by INS to serve the Notice of Hearing, which was returned. Ms. Miyashita sought a continuance and entered her appearance in Immigration Court on the day of the respondent's hearing. However, given that she represented the respondent in a separate matter and did not have a current address or contact information for the respondent, we cannot find that Ms. Miyashita properly represented the respondent at the time of service of the OSC or at the time she entered her appearance. The respondent did not have reason to believe that he was in need of counsel at that time and there is no evidence that he consented to Ms. Miyashita's representation of him in Immigration Court. Therefore, service of the OSC on the respondent's former counsel was not sufficient to give the respondent notice of his proceedings.

We conclude that the respondent established that his proceedings should be reopened. We will remand for the Immigration Judge to determine whether the respondent otherwise had proper notice of the proceedings or to determine what other action, if any, is appropriate in this case.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained and the proceedings are reopened and remanded.



FOR THE BOARD