



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: ALFARO-CARCAMO, FRAANKLI... A 205-476-015

Date of this notice: 10/12/2018

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:
Snow, Thomas G
Kelly, Edward F.
Geller, Joan B

Userteam: Docket

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Falls Church, Virginia 22041

File: A205-476-015 – San Antonio, TX

Date:

OCT 12 2019

In re: Franklin Emigdio ALFARO-CARCAMO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Judith E. Goldenberg, Esquire

ON BEHALF OF DHS: Maribel Mercado
Assistant Chief Counsel

APPLICATION: Reopening

The respondent has appealed from the Immigration Judge's decision dated September 18, 2017, denying his motion to reopen proceedings. The respondent was ordered removed in absentia after he did not appear for a scheduled removal hearing on August 26, 2013. The Department of Homeland Security (DHS) has filed a motion for summary affirmance. The respondent's appeal will be sustained and the record will be remanded for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

After consideration of the totality of the circumstances presented, we are persuaded that the respondent met his burden to rebut the presumption that notice of his hearing was properly delivered by regular mail such that proceedings should therefore be reopened pursuant to section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(ii). *See Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). Significantly, the respondent has presented evidence on appeal that the address to which the hearing notice was sent contained the wrong zip code. The respondent also submitted evidence that he reported to the DHS after he was ordered removed in absentia, suggesting that he was unaware of the hearing at which he was ordered removed. After review of the evidence, we are persuaded that the respondent has overcome the presumption that the notice of hearing was properly served by mail in this case. *See id.* Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.



FOR THE BOARD