



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: R [REDACTED] D [REDACTED], M [REDACTED] D [REDACTED] A [REDACTED]-859
Riders: [REDACTED]

Date of this notice: 11/21/2019

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:
Mann, Ana
Liebmann, Beth S.
Kelly, Edward F.

Humadyl
Userteam: Docket

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RC

Falls Church, Virginia 22041

Files: A [REDACTED]-859 -- El Paso, TX
A [REDACTED]

Date: NOV 21 2019

In re: M [REDACTED] D [REDACTED] R [REDACTED]-D [REDACTED]
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Akil Tirana, Esquire

APPLICATION: Reopening

The respondents appeal the Immigration Judge's decision dated August 28, 2019, denying their motion to reopen. The respondents had previously been ordered removed in absentia for their failure to appear for the scheduled hearing on August 13, 2019. The appeal will be sustained, proceedings will be reopened, and the record will be remanded.

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, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The Board possesses discretion to reopen or reconsider cases sua sponte. See 8 C.F.R. § 1003.2(a); see also *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). We consider that the Department of Homeland Security (DHS) released the respondents on their own recognizance on April 29, 2019, and the respondents were instructed to appear at the Baltimore Field Office on May 15, 2019. Furthermore, the record reflects that the DHS filed a non-opposition to the respondents' motion to reopen stating that the respondents had originally been placed in the Migrant Protection Program (MPP), but after re-entering the United States illegally, the respondents were taken out of MPP and released on their own recognizance.² The DHS further stated that there appeared to be a genuine issue of notice and the DHS should not have moved to remove the respondents on August 13, 2019. Based on the particular circumstances in this case, we will grant the respondent's motion to reopen, and we will rescind their in absentia

¹ The respondent M [REDACTED] D [REDACTED] R [REDACTED]-D [REDACTED] (A [REDACTED]-859) is the mother of [REDACTED], a minor child.

² The certificate of service for the DHS non-opposition to the respondents' motion to reopen is dated August 30, 2019, and apparently was received by the El Paso Immigration Court after the Immigration Judge issued a decision on August 28, 2019 (mailed on August 29, 2019).

orders pursuant to our sua sponte authority.³ See 8 C.F.R. § 1003.2(a); see also *Matter of J-J-*, *supra*. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the in absentia orders of removal are rescinded, the proceedings are reopened, and the record is remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

³ We note that the respondents' removal proceedings remain at the El Paso Immigration Court as the respondents have not filed a change of venue motion. See *Matter of Rivera*, 19 I&N Dec. 688 (BIA 1988) (the mere filing of a motion for a change of venue does not relieve the respondent of his responsibility to appear, and unless the Immigration Judge grants the motion, the respondent remains obligated to appear at the appointed date and time).