



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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**DHS/ICE Office of Chief Counsel - BOS
P.O. Box 8728
Boston, MA 02114**

Name: CARREIRO, VICTOR MANUEL

A 203-159-537

Date of this notice: 3/24/2016

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:
Miller, Neil P.

USCIS
Userteam: Docket

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Falls Church, Virginia 22041

File: A203 159 537 – Boston, MA

Date:

In re: VICTOR MANUEL CARREIRO

MAR 24 2016

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Artemisa L. Monteiro, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Cape Verde, appeals an Immigration Judge's order denying his motion to reopen an inabsentia order of removal. Given the procedural circumstances, we accept the appeal on certification. *See* 8 C.F.R. § 1003.1(c). The Immigration Judge's inabsentia order dated August 28, 2014, and subsequent denial of a motion to reopen dated April 21, 2015, are vacated, proceedings are reopened, and the record is remanded for further proceedings.

The Board reviews an Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review issues of law, discretion, or judgment de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

After the Immigration Judge issued the in absentia order, the respondent filed a motion to reopen alleging that he appeared at the time indicated on the Notice of Hearing, but the hearing was held at an earlier time. The Immigration Judge denied the motion to reopen because, *inter alia*, the respondent did not provide sufficient detail regarding the times of the hearing and when he actually appeared.

Our review of the record indicates that the respondent was scheduled to appear at 2 pm on August 28, 2014 (Exh. 1A). However, according to the digital recording of the August 28, 2014, hearing, the Immigration Judge began the respondent's hearing at 1 pm, and had completed the hearing, and issued an order of removal in absentia, by 1:28 pm. Given this evidence, we will vacate the inabsentia order and subsequent denial of reopening, reopen the proceedings and remand the record for a new hearing. Accordingly, the following orders shall be issued.

ORDER: The Immigration Judge's inabsentia order and subsequent denial of the motion to reopen are vacated, proceedings are reopened, and the record remanded for a new hearing and entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

attorney Monteiro
monteiro, artemisa lopes
36 Elm Hill Avenue
boston, MA 02121

IN THE MATTER OF
CARREIRO, VICTOR MANUEL

FILE A 203-159-537

DATE: Aug 27, 2015

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

✓ OTHER:

COURT CLERK
IMMIGRATION COURT

CC: LOWY, BRANDON L.
JFK BUILDING, ROOM 425
BOSTON, MA, 02203

Immigrant & Refugee Appellate Center, LLC | www.ircac.net

United States Department of Justice
Executive Office for Immigration Review
Immigration Court – BOSTON

In the Matter of:

A Number: A 203-159-537

VICTOR CARREIRO

Upon consideration of the respondents motion to RE OPEN
it is HEREBY ORDERED that the motion be ~~GRANTED~~ **DENIED** because:
without prejudice

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.

☒ Other: The motion is lacking in specifics and a declaration from the Respondent. There are no specific times indicated in the motion. The respondent's declaration must be detailed and use the format at 28 USC 1795.

Deadlines:

- ☐ The application(s) for relief must be filed by _____
- ☐ The respondent must comply with DHS biometrics instructions by _____

Date: 21 April 2015

Immigration Judge

J. Amato

Certificate of Service

This document was served by: ☐ Mail ☒ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☒ Alien's Atty/Rep ☒ DHS

7/30/15

J. Amato

Remailed to Attorney
Artemisa Lopez
Monteiro and
D.H.S.

UNITED STATES IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

IN THE REMOVAL CASE OF

Alien # 203-159-537

Alien Name: **CARREIRO, VICTOR MANUEL**
RESPONDENT

ORDERS

This is a memorandum of the Court's Decision and Orders entered on **August 28, 2014.**

This memorandum is solely for the convenience of the parties.

The oral or written Findings, Decision and Orders is the official opinion in this case.

() Both parties waived issuance of a formal oral decision in the case.

☒

The respondent was ordered REMOVED from the United States to

Cape Verde

☒ in absentia.

[] Respondent's application for VOLUNTARY DEPARTURE was DENIED and respondent was ordered removed to _____, in the alternative to

[] Respondent's application for VOLUNTARY DEPARTURE was GRANTED until _____, upon posting a voluntary departure bond in the amount of \$ _____ to DHS within five business days from the date of this Order, with an alternate Order of removal to _____ or _____. Respondent shall present to DHS within () thirty days () sixty days from the date of this Order, all necessary travel documents for voluntary departure.

[] Respondent's application for ASYLUM was
() granted () denied () withdrawn with prejudice.
() subject to the ANNUAL CAP under the INA section 207(a)(5).
() Respondent knowingly filed a FRIVOLOUS asylum application.

[] Respondent's application for WITHHOLDING of removal under INA section 241(b)(3) was
() granted () denied () withdrawn with prejudice.

[] Respondent's application for WITHHOLDING of removal under the Torture Convention was
() granted () denied () withdrawn with prejudice.

[] Respondent's application for DEFERRAL of removal under the Torture Convention was
() granted () denied () withdrawn with prejudice.

[] Respondent's application for CANCELLATION of removal under section () 203(b) of NACARA, () 240A(a) () 240A(b)(1) () 240A(b)(2) of the INA, was
() granted () denied () withdrawn with prejudice.
If granted, it was ordered that the DHS issue all appropriate documents necessary to give effect to this Order.
Respondent () is () is not subject to the ANNUAL CAP under INA section 240A(e).

[] Respondent's application for a WAIVER under the INA section _____ was
() granted () denied () withdrawn or () other _____.
() The conditions imposed by INA section 216 on the respondent's permanent resident status were removed.

☒

Respondent's application for ADJUSTMENT of status under section 245 of the
☒ INA () NACARA () _____ was

() granted ☒ denied () withdrawn with prejudice. and abandoned.
() granted on a conditional basis under § 216 of the INA.

If granted, it was ordered that DHS issue all appropriate documents necessary to give effect to this Order.

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Alien Number: 203-159-537

Alien Name: CARREIRO, VICTOR MANUEL

- ☐ Respondent's status was RESCINDED pursuant to the INA section 246.
- ☐ Respondent's motion to WITHDRAW his application for admission was () granted () denied. If the respondent fails to abide by any of the conditions directed by the district director of DHS, then the alternate order of removal shall become immediately effective without further notice or proceedings: the respondent shall be removed from the United States to _____.
- ☐ Respondent was ADMITTED as a _____ until _____ As a condition of admission, the respondent was ordered to post a \$ _____ bond.
- ☐ Case was () TERMINATED () with () without prejudice () ADMINISTRATIVELY CLOSED.
- ☐ Respondent was orally advised of the LIMITATION on discretionary relief and consequences for failure to depart as ordered.
- ☐ If you fail to voluntarily depart when and as required, you shall be subject to civil money penalty of at least \$1,000, but not more than \$5,000, and be ineligible for a period of 10 years for any further relief under INA sections 240A, 240B, 245, and 248 (INA Section 240B(d)).
- ☐ If you are under a final order of removal, and if you willfully fail or refuse to 1) depart when and as required, 2) make timely application in good faith for any documents necessary for departure, or 3) present yourself for removal at the time and place required, or, if you conspire to or take any action designed to prevent or hamper your departure, you shall be subject to civil money penalty of up to \$500 for each day under such violation. (INA section 274D(a)). If you are removable pursuant to INA 237(a), then you shall further be fined and/or imprisoned for up to 10 years. (INA section 243(a)(1)).

☒ Other: In Absentia Order. Respondent
failed to appear. Attorney Grimaldi
was present. All applications deemed
abandoned and denied.

MATTHEW D'ANGELO, Immigration Judge
Date: August 28, 2014

APPEAL: ~~WAIVED~~ -- RESERVED

BY: ~~RESPONDENT~~ -- DHS -- BOTH

DUE BY: ~~1/1/15~~

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ DHS
DATE: Aug 28, 2014 BY: ☐ COURT STAFF ☐ JUDGE Stank
Attachments: ☒ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other