



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - CHL
5701 Executive Ctr Dr., Ste 300
Charlotte, NC 28212**

Name: APARICIO SANCHEZ, ARMANDO

A 206-132-700

Date of this notice: 3/2/2017

Enclosed is a courtesy copy of the Board's decision in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

Clerk:
User team: Clerk

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Falls Church, Virginia 22041

File: A206 132 700 – Charlotte, NC

Date: **MAR - 2 2017**

In re: ARMANDO APARICIO-SANCHEZ

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se¹

ON BEHALF OF DHS: Hilary Rainone
Assistant Chief Counsel

APPLICATION: Reconsideration

The Department of Homeland Security (DHS) has filed a timely motion to reconsider our November 15, 2016, decision sustaining the respondent's appeal of an Immigration Judge's order denying reopening of an in absentia order and remanding the record for a hearing. Section 240(c)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6). On reconsideration, the DHS contends that the Board erred in sustaining the appeal. The DHS also argues that since no stay was in effect and the respondent was deported during the pendency of his appeal, the respondent's appeal was withdrawn under 8 C.F.R. § 1003.4.

The motion is denied as the DHS has not identified any material error of fact or law in our prior decision. 8 C.F.R. § 1003.2(b); *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006). Moreover, it is well settled that departure of an alien does not deprive an Immigration Judge of jurisdiction to entertain a motion to reopen to rescind an in absentia order of removal if the motion is premised on lack of notice. *Matter of Bulnes*, 25 I&N Dec. 57 (BIA 2009). See *Contreras-Rodriguez v. Atty. Gen'l*, 462 F.3d 1314 (11th Cir. 2006)(both an Immigration Judge and the Board retain jurisdiction to reopen removal proceedings to address whether alien received sufficient notice of the removal hearing). See also *Madrigal v. Holder*, 572 F.3d 239 (6th Cir. 2009)(8 C.F.R. § 1003.4 is not applicable to forcible removal of alien during pendency of appeal of denial of a motion to reopen an in absentia order).

On appeal, as below, the respondent argued that notice was not proper. After considering the totality of the circumstances, we sustained the appeal noting that the respondent may not have received proper notice.² The DHS has not identified any material error in our decision, and our

¹ A courtesy copy of this decision will be mailed to Brandon D. Pierce, Esquire, 113 Mill Place Parkway, Suite 103, Verona, VA 24482.

² During the pendency of the appeal, neither party notified the Board that the respondent had been forcibly removed.

independent review has not identified any error. Accordingly, the following orders will be issued.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The record is again remanded in accordance with our November 15, 2016, decision.



FOR THE BOARD