



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**DHS/ICE Office of Chief Counsel - LVG
3373 Pepper Lane
Las Vegas, NV 89120**

Name: FU, QIANG

A 205-717-346

Date of this notice: 1/5/2017

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:
Adkins-Blanch, Charles K.
Grant, Edward R.
Mann, Ana

Userteam: Docket

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www.irac.net/unpublished/index/

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Falls Church, Virginia 22041

File: A205 717 346 – Las Vegas, NV

Date:

JAN - 5 2017

In re: QIANG FU

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The respondent, a native and citizen of China, was ordered removed in absentia on July 18, 2016. On August 8, 2016, the respondent filed a motion to reopen proceedings, which an Immigration Judge denied on August 11, 2016. The respondent filed a timely appeal of that decision. The appeal will be sustained, the Immigration Judge's order will be vacated, proceedings will be reopened and the record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the clearly erroneous standard. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo.

The respondent, in his motion to reopen proceedings, has indicated that he arrived in the courtroom within 30 minutes of the time of his scheduled hearing due to a delay with his bus. We find that, considering this record as a whole, that the respondent cannot be said to have failed to appear for his hearing under these circumstances. See *Perez v. Mukasey*, 516 F.3d 770 (9th Cir. 2008); *Jerezano v. INS*, 169 F.3d 613, 615 (9th Cir. 1999); *Romani v. INS*, 146 F.3d 737, 739 (9th Cir. 1998). We will therefore sustain the respondent's appeal and remand the record for further proceedings.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3365 PEPPER LANE, SUITE 200
LAS VEGAS, NV 89120

FU, QIANG
6261 W. KATIE AVENUE
LAS VEGAS, NV 89103

Date: Aug 11, 2016

File A205-717-346

In the Matter of:
FU, QIANG

X

Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before 9-12-2016. The appeal must be accompanied by proof of paid fee (\$110.00).

Enclosed is a copy of the oral decision.

Enclosed is a transcript of the testimony of record.

You are granted until _____ to submit a brief to this office in support of your appeal.

Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

X

Enclosed is an Appeals Packet.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

D. Engel
Immigration Court Clerk

UL

cc: CHRISTIAN PARKE, ESQUIRE
3373 PEPPER LANE, STE. 200
LAS VEGAS, NV 89120

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LAS VEGAS, NEVADA**

FILE NUMBER: A205 717 346

IN THE MATTER OF

Qiang FU,

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGE: Section 237(a)(1)(C)(i) of the Immigration and Nationality Act
(INA)—Nonimmigrant—failed to comply with conditions of status

APPLICATION: Motion to Reopen

ON BEHALF OF THE RESPONDENT:

Pro se

ON BEHALF OF THE DHS:

Maya Timis
Assistant Chief Counsel


DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent's motion to reopen will be denied. The respondent was ordered removed from the United States based upon his failure to attend a removal hearing on July 18, 2016. An in absentia order may be rescinded if an alien establishes that he failed to appear because: 1) he was in state or federal custody and the failure to appear was through no fault of his own; 2) he did not receive notice of the proceedings; or 3) the failure to appear was due to "exceptional circumstances." INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii). The respondent contends in the motion to reopen that he arrived "a little bit late" for the hearing on July 18, 2016, because he "traveled from another city." The record reflects that the Court called and completed the respondent's case that day at 1:15PM. See Jerezano v. INS, 169 F.3d 613 (9th Cir. 1999). There were no other cases on the Court's afternoon docket when the respondent's case was called. The record also reflects that the respondent was present in Court on May 9, 2016, and the Court scheduled his case for an afternoon hearing to be conducted on July 18, 2016, based upon the respondent's representation that he might be relocating to Portland, Oregon. No change of venue motion was received from the respondent. Under the circumstances, the respondent has not demonstrated "exceptional circumstances" which excuse his failure to appear. See Valencia-Fragoso v. INS, 321 F.3d 1204 (9th Cir. 2003); Jerezano v. INS, supra, at 615 ("an IJ need not linger in the courtroom awaiting tardy litigants").

ORDER: The respondent's Motion to Reopen is DENIED.

DATE:

August 11, 2016



Jeffrey L. Romig
Immigration Judge