



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: AREVALO-LOPEZ, ADRIANA EL... A 098-121-311

Date of this notice: 6/14/2016

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John
Holiona, Hope Malia
Kendall-Clark, Molly

U.S. DEPARTMENT OF JUSTICE

Userteam: Docket

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**AREVALO-LOPEZ, ADRIANA ELIZABETH
A098-121-311
EL PASO PROCESSING CENTER
8915 MONTANA AVENUE
EL PASO, TX 79925**

**DHS/ICE Office of Chief Counsel - HOU
126 Northpoint Drive, Suite 2020
Houston, TX 77060**

Name: AREVALO-LOPEZ, ADRIANA EL... A 098-121-311

Date of this notice: 6/14/2016

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John
Holiona, Hope Malia
Kendall-Clark, Molly

Printed Name: Donna Carr
User team: Donna Carr

Falls Church, Virginia 22041

File: A098 121 311 – Houston, TX

Date:

JUN 14 2016

In re: ADRIANA ELIZABETH AREVALO-LOPEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Claudia Y. Farfan, Esquire

APPLICATION: Reopening

ORDER:

The respondent appeals from the Immigration Judge's decision of January 28, 2016, in which the Immigration Judge denied the respondent's motion to reopen. The Department of Homeland Security has not submitted a response to the appeal. Upon our de novo review, we conclude that the respondent did establish that reopening is warranted. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii); *see also* 8 C.F.R. § 1003.2(a). Accordingly, the appeal is hereby sustained.

FURTHER ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

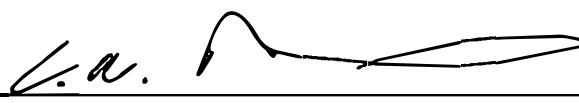
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information was provided in Spanish. The Court therefore has very specific and credible evidence that Respondent did receive notice of the November 2, 2004 hearing from the Agent, regardless of whether she received the NTA. The Court also finds that this evidence makes Respondent's claim to have never received notice of the November 2, 2004 hearing suspicious, at the very least.

To the extent Respondent argues that her failure to appear should be excused because the NTA was taken away from her by the boyfriend, Jose Rogelio Hernandez, and she was prevented from acting as directed by the Court, the Court agrees with the Government that Respondent has not shown that she acted with diligence once she no longer was in that relationship/situation, which is an independent basis to deny her motion to reopen. Respondent entered in 2004. She did not file the Motion to Reopen until December of 2015. Respondent's affidavit does not indicate when she was left (or was able to leave) Jose Rogelio Hernandez. She does not indicate conditions (or the timeframe for those conditions) which would prevent her from making phone calls to find out about her immigration status and/or filing a motion to reopen. Absent such evidence, and given the long period of time between her order of deportation and the motion to reopen, she has not shown diligence and that reopening is warranted. Iturribarria v. INS, 321 F.3d 889, 894 (9th Cir.2003)(deadline can be equitably tolled when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with diligence). See also Avagyan v. Holder, 646 F.3d 672, 674 (9th Cir.2011)(equitable tolling of the filing deadline is available where petitioner establishes that she was prevented from filing because of deception, fraud or error, **and** acted with due diligence in discovering such circumstances). Periods of unaccounted-for delay reveal a lack of diligence. Mahmood v. Gonzales, 427 F.3d 248, 252 (3d Cir. 2005).

To the extent Respondent claims that her failure to appear is excused because no one explained that she had to appear in court and she did not understand the papers she received, Respondent's argument again does not warrant granting the motion to reopen. Personal service in English to a non-English-speaker typically satisfies due process because it puts the alien on notice that further inquiry is needed, leaving the alien to seek help from someone who can overcome the language barrier. Singh v. Holder, 749 F.3d 622 (7th Cir. 2014). See also Ojeda-Calderon v. Holder, 726 F.3d 669, 675 (5th Cir.2013) (collecting cases). Even if the papers received by Respondent were taken from her, she knew that she needed to investigate the contents of the papers she received and she should have taken steps to figure out what the papers said, such as requesting copies, etc.

WHEREFORE, premises considered, it is ORDERED that Respondent's Motion to Reopen is DENIED.



Immigration Judge
Chris A. Brisack

Date: January 28, 2016

cc: all parties