



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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1240 E. 9th St., Room 585
Cleveland, OH 44199

Name: LORENZO-AGUILAR, AMBROSIO A 075-408-836

Date of this notice: 7/2/2013

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.

schwarzA
User team: Docket

Immigrant & Refugee Appellate Center | www.irac.net

SSA



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**LORENZO-AGUILAR, AMBROSIO
A075-408-836
MORROW COUNTY JAIL
101 HOME ROAD
MT. GILEAD, OH 43338**

**DHS/ICE Office of Chief Counsel - CLE
1240 E. 9th St., Room 585
Cleveland, OH 44199**

Name: LORENZO-AGUILAR, AMBROSIO A 075-408-836

Date of this notice: 7/2/2013

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:
Adkins-Blanch, Charles K.

schwarzA
User team: Docket

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 22041

File: A075 408 836 – Cleveland, OH

Date:

JUL - 2 2013

In re: AMBROSIO LORENZO-AGUILAR

IN REMOVAL PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Jay G. Perez, Esquire

ON BEHALF OF DHS: Michael A. Tripi
Assistant Chief Counsel

On May 22, 2013, the Immigration Judge certified this case to the Board of Immigration Appeals ("Board"). In a detailed and well-reasoned memorandum and order, the Immigration Judge set forth the reasons why proper venue of the respondent's motions lies in the Detroit Immigration Court. The Immigration Judge set a deadline of 15 days for the parties to respond to the order and memorandum. The respondent, represented by counsel at the immigration court level, has no opposition to a change of venue. The Department of Homeland Security ("DHS"), while opposing the motion, also declared no opposition to the proposed change of venue. Upon review, for reasons given by the Immigration Judge, we conclude that venue in this case properly lies in the Detroit Immigration Court.

Accordingly, the following order will be entered.

ORDER: Venue in this case lies in the Detroit Immigration Court, and the record is remanded to the Detroit Immigration Court for the issuance of a decision on the respondent's motion to reopen.



FOR THE BOARD

Immigrant & Refugee Appellate Center | www.irac.net

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
801 WEST SUPERIOR AVENUE, SUITE 13-100
CLEVELAND, OHIO 44113

In The Matter Of:

Ambrosio LORENZO-AGUILAR,

Respondent.

File Number: A075-408-836

Date:

5/22/13

In Removal Proceedings

****DETAINED****

RE: The Respondent's Motion to Reopen – Venue Issue

ON BEHALF OF THE RESPONDENT:

Jay G. Perez, Esq.
6796 North High Street
Suite 215
Worthington, Ohio 43085

ON BEHALF OF THE DHS:

Victoria Christian, Deputy Chief Counsel
Office of the Chief Counsel
Immigration and Customs Enforcement
1249 East Ninth Street, Suite 519
Cleveland, Ohio 44199

MEMORANDUM AND ORDER

On August 6, 1997, the Immigration and Naturalization Service ("legacy INS," now the Department of Homeland Security, "DHS") issued a Notice to Appear ("NTA"), charging the Respondent with removability under Immigration and Nationality Act ("INA" or "the Act") § 212(a)(6)(A)(i) (present without admission or parole). That NTA was filed with the Detroit, Michigan Immigration Court on September 27, 2002.

On June 12, 2003, Immigration Judge Newberry, sitting in Detroit, Michigan, entered an *in absentia* order of removal when the Respondent failed to appear for his scheduled hearing.

At some time subsequent to that order, the Respondent was apprehended by the DHS and is currently detained at Morrow County Jail in Mt. Gilead, Ohio.

On April 16, 2013, the Respondent filed a motion to reopen his removal proceedings. On May 17, 2013, the DHS filed a response in opposition.

For the reasons set forth below, the Court finds that the Cleveland, Ohio Immigration Court is the improper venue to adjudicate the Respondent's motion, and will certify this decision to the Board of Immigration Appeals ("BIA").

DISCUSSION

I.

“An Immigration Judge has the authority to consider and decide whether he has jurisdiction over a matter presented to him. In other words, an Immigration Judge has jurisdiction to determine his jurisdiction.” *Matter of Bulnes*, 25 I&N Dec. 57, 59 (BIA 2009). The Cleveland Immigration Court is the improper venue for the Respondent’s motion to reopen, as this Court does not have jurisdiction over the Respondent’s removal proceedings under the Code of Federal Regulations, which “has the force and effect of law as to th[e] Board and immigration judges...” *Matter of Fede*, 20 I&N Dec. 35, 36 (BIA 1989).

“Venue shall lie at the Immigration Court where jurisdiction vests pursuant to § 1003.14.” 8 C.F.R. § 1003.20(a).

Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. The charging document must include a certificate showing service on the opposing party pursuant to §1003.32 which indicates the Immigration Court in which the charging document is filed.

8 C.F.R. § 1003.14(a).

The Immigration Judge, for good cause, may change venue *only upon motion by one of the parties*, after the charging document has been filed with the Immigration Court. The Immigration Judge may grant a change of venue only after the other party has been given notice and an opportunity to respond to the motion to change venue.

8 C.F.R. § 1003.20(b) (*emphasis added*).

In this case, the Respondent’s NTA was filed with the Detroit Immigration Court on September 27, 2002. (Exh. 1). Thus, jurisdiction and venue vested with that Court on that date. The Detroit Immigration Court subsequently issued a hearing notice on September 30, 2002, instructing the Respondent to appear for his hearing in Cincinnati, Ohio. That location allowed the court with jurisdiction to conduct a hearing with a respondent via video conference pursuant to INA § 240(b)(2)(A)(iii). When the Respondent did not appear for that hearing, Judge Newberry of the Detroit Immigration Court issued an *in absentia* order of removal.

There is no evidence in the record that one of the parties filed a motion to change venue to the Cleveland Immigration Court prior to the issuance of the Respondent’s *in absentia* order of removal. Thus, under the regulations, venue and jurisdiction continue to lie with the Detroit Immigration Court.

The Respondent was subsequently apprehended and placed in detention in the Morrow County Jail in Mt. Gilead, Ohio. The Respondent’s counsel filed a motion to reopen the Respondent’s

removal proceedings with the Court having administrative control over that facility, which is the Cleveland Immigration Court. Upon receipt of that motion, the Cleveland Immigration Court forwarded the motion to the Detroit Immigration Court. The Detroit Immigration Court obtained the Respondent's Record of Proceedings from its Federal Records Center, and sent both the Motion to Reopen and Record of Proceedings back to the Cleveland Immigration Court.

However, as this Court is not the proper venue under 8 C.F.R. § 1003.14(a) and 8 C.F.R. § 1003.20(a), the Court will not proceed to adjudication on the merits.

II.

The issue has been raised that the Cleveland Immigration Court is the proper venue because the city of Cincinnati, the hearing location for the Respondent's original removal proceedings, is in the State of Ohio, and this fact should make Cleveland the "Administrative Control Court" for that hearing location.

An administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area. All documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court. A list of the administrative control Immigration Courts with their assigned geographical areas will be made available to the public at any Immigration Court.

8 C.F.R. § 1003.11.

This provision of the Federal Regulations dictates that, for every Immigration Court, there is an administrative control court which creates and maintains Records of Proceeding. This Regulation further directs that any filings for a case over which an administrative control court has administrative control must be filed with the administrative control court. Thus, this Regulation comes to prohibit the filing of submissions with any court that is not an administrative control court, *regardless* of whether the administrative control court, or another court over which that court has administrative control, is the proper venue for the Respondent's removal proceedings.

8 C.F.R. § 1003.11 has no bearing on jurisdiction and venue. To read this Regulation otherwise would render 8 C.F.R. § 1003.20 meaningless, and "[r]egulations, like statutes, must be interpreted to give effect to the entire regulatory scheme." *Matter of C-W-L-*, 24 I&N Dec. 346, 348 (BIA 2007); *Matter of Figueroa*, 25 I&N Dec. 596, 598 (BIA 2011); *Matter of Henriquez Rivera*, 25 I&N Dec. 575, 577 (BIA 2011).

Further, Cincinnati was never an "immigration court." Before the Cleveland Immigration Court opened in October of 2006, there had *never* been an immigration court in the State of Ohio. Rather, Cincinnati was a hearing location at which a respondent could appear for a hearing via video conferencing with a court sitting elsewhere. Even if the Court were to read both venue and hearing locations into the Regulation, the Cleveland Immigration Court was *never* assigned

administrative control of the Cincinnati hearing location itself before that location closed in 2009, even after this Court was opened in 2006. The last court to be responsible for that hearing location was the Arlington Immigration Court. See <http://web.archive.org/web/20090312072544/http://www.justice.gov/eoir/vll/courts3.htm#Arlington>.

Rather, all Cincinnati cases still *pending* in 2009, when the Cincinnati location closed, then fell under the administrative control of the Cleveland Immigration Court. See <http://www.justice.gov/eoir/press/09/CincinnatiClosureRelease.pdf>. The Respondent's case was no longer pending in 2009, as a final administrative order of removal had been entered in 2003.

In this case, jurisdiction vested with the Detroit Immigration Court, which is its own administrative control court, and continues to be where venue lies, regardless of subsequent events which may not have complied with the Regulations, as venue was never changed to Cleveland, and Cleveland never had administrative control of a case heard at Cincinnati hearing location which ended in an order of removal issued in 2003.

Thus, even if the Court would consider the administrative control court to be the court where venue lies in the Respondent's removal proceedings, that court would be Detroit, which had administrative control over the Cincinnati hearing location at the time the Respondent's removal proceedings were pending. Again, the Cleveland Immigration Court never had administrative control over cases heard at the non-detained hearing location that was formerly located in Cincinnati, Ohio which were not pending on April 6, 2009.

III.

8 C.F.R. § 1003.23(b), the Regulation governing motions to reopen, is inapplicable to the Respondent's case.

"Motions to reopen or reconsider a decision of an Immigration Judge must be filed with the Immigration Court having administrative control over the Record of Proceeding." 8 C.F.R. § 1003.23(b)(1)(ii). As the Court has discussed above, this Court is not now, nor has it ever been, the administrative control court over cases heard at the Cincinnati hearing location which were not pending in 2009.

The Respondent's NTA was filed with the Detroit Immigration Court. Immigration Judge Newberry of the Detroit Immigration Court issued the *in absentia* order of removal. Thus, the administrative control court continues to be, and venue continues to lie in, the Detroit Immigration Court.

Under 8 C.F.R. § 1003.23(b)(1)(iii), "[i]f the Immigration Judge is unavailable or unable to adjudicate the motion to reopen or reconsider, the Chief Immigration Judge or his or her delegate shall reassign such motion to another Immigration Judge." The Immigration Judge that issued the *in absentia* order of removal in the Respondent's case was Immigration Judge Newberry of the Detroit Immigration Court. IJ Newberry is still a sitting Judge on that Court, and is both available and able to adjudicate the Respondent's motion. As the authority of the Chief

Immigration Judge, and the delegated authority of the Assistant Chief Immigration Judges, to reassign cases is limited to situations where the Immigration Judge that ordered the Respondent removed is unavailable or unable to adjudicate the motion, this Court cannot become the proper venue by virtue of reassignment by the Chief Immigration Judge.

IV.

Under 8 C.F.R. § 1003.1(c), an Immigration Judge may ask the Board to review his decision. The Court will do so in this case, given the fact that the Respondent is currently detained at the Morrow County Jail in Mt. Gilead, Ohio, and that this case presents fundamental issues of procedural due process and venue.

Pursuant to 8 C.F.R. § 1003.7, this order shall serve as the Notice of Certification as provided below.

Whenever, in accordance with the provisions of § 1003.1(c), a case is certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of the Service or the Immigration Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that **the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 1003.3(c).** The case shall be certified and forwarded to the Board by the office of the Service or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

8 C.F.R. § 1003.7. 8 C.F.R. § 1003.3(c)(1) directs that “the parties shall be provided 21 days in which to file simultaneous briefs unless a shorter period is specified...”

Because a decision in this matter by the Board will not be a final disposition, and the Respondent will most likely remain detained pending the certification, the Court specifies that the parties shall have **fifteen (15) days from service of this order** to file briefs. Despite the uncertainty

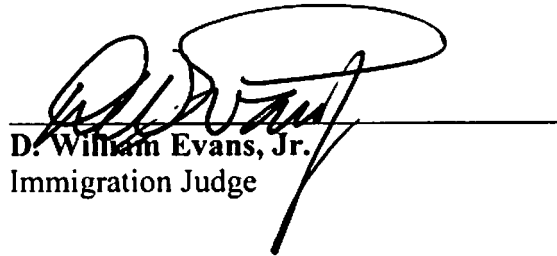
regarding which court is the proper venue and administrative control court in this matter, the parties are directed to file their briefs with the Cleveland Immigration Court.

ORDERS

1. The Cleveland Immigration Court is the improper venue for adjudication of the Respondent's motion to reopen pursuant to 8 C.F.R. § 1003.20(a) and 8 C.F.R. § 1003.14(a).
2. The Court will certify this case to the Board of Immigration Appeals upon expiration of the window to submit briefs.
3. The Respondent and the DHS shall have **fifteen (15) days** from service of this decision to file briefs with the Cleveland Immigration Court, which will be forwarded with this certified decision to the Board.
4. The Stay of Removal remains in effect until a decision is made on the merits of the Respondent's motion to reopen.

So ordered.

Date: **5-22-13**


D. William Evans, Jr.
Immigration Judge