



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

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LAW OFFICE OF PARK & ASSOCIATES  
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**DHS/ICE Office of Chief Counsel - HON  
595 Ala Moana Boulevard  
Honolulu, HI 96813-4999**

**Name: NOBLE, JOEFRY F**

**A 200-574-891**

**Date of this notice: 9/13/2012**

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.  
Guendelsberger, John  
Hoffman, Sharon

yungc  
Userteam: Docket

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SAIPAN, MP 96950**

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**Name: NOBLE, JOEFRY F**

**A 200-574-891**

**Date of this notice: 9/13/2012**

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.  
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**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A200 574 891 - Saipan, MP

Date: SEP 13 2012

In re: JOEFRY F. NOBLE a.k.a. Joe fry Flores Noble

IN REMOVAL PROCEEDINGS


APPEAL

ON BEHALF OF RESPONDENT: Mun Su Park, Esquire

The respondent, a native and citizen of Philippines, was ordered removed in absentia on August 9, 2011. On September 7, 2011, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on September 23, 2011. The respondent filed a timely appeal of that decision. The appeal will be sustained, proceedings will be reopened and the record will be remanded.

Upon review, we find that based upon the totality of circumstances presented in this case, including the respondent's diligence in hiring counsel and timely filing his motion to reopen proceedings as well as his affidavit in which he explains the circumstances surrounding his failure to appear including his wife's serious illness, we will reopen proceedings, sustaining the respondent's appeal of the Immigration Judge's denial of the motion under our de novo review authority. Accordingly, the respondent will be provided the opportunity to attend another hearing.

ORDER: The appeal is sustained, proceedings are reopened, and the record is remanded for further proceedings consistent with the above opinion.

  
\_\_\_\_\_  
FOR THE BOARD

Immigrant & Refugee Appellate Center | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
MARINA HEIGHTS II, SUITE 301  
SAIPAN, MP 96950

NOBLE, JOEFRY  
C/O RUTH DE LEON P.O. BOX 506125  
SAIPAN, MP 96950

IN THE MATTER OF  
NOBLE, JOEFRY

FILE A 200-574-891

DATE: Sep 23, 2011

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  
P.O. BOX 8530  
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  
MARINA HEIGHTS II, SUITE 301  
SAIPAN, MP 96950

— OTHER: \_\_\_\_\_

IV  
COURT CLERK  
IMMIGRATION COURT

FF

CC: Latey, Chandani, Asst Chief Counsel  
Marina Heights II, 1st fl  
Saipan, MP, 96950

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
Marina Heights II Building, Suite 301  
Marina Heights Business Park  
Saipan, MP 96950**

File No.: A200 574 891 ) Date: September 23, 2011  
)  
In the Matter of )  
) **IN REMOVAL PROCEEDINGS**  
Joe fry NOBLE, ) SAI  
)  
Respondent )

**ON BEHALF OF RESPONDENT:**  
Pro Se

**ON BEHALF OF THE DHS:**  
Chandu Latey, Asst. Chief Counsel  
595 Ala Moana Blvd.  
Honolulu, HI 96813

**CHARGES:** Section 212(a)(6)(A)(i) of the Immigration and Nationality Act  
Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act

**APPLICATION:** Motion to Reopen and Rescind the *In Absentia* Order of Removal

**WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE**

**I. Procedural History**

Joe fry Noble ("Respondent") is a 42 year old, male, native and citizen of the Philippines. See Exhibits 1, 3. On April 8, 2011, the Department of Homeland Security ("DHS") personally served Respondent with the form I-862, *Notice to Appear* ("NTA"), charging him as removable under: (1) section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General; and (2) INA § 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identify and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *Id.*

The NTA ordered Respondent to appear before an immigration judge at the Saipan Immigration Court on August 9, 2011, at 10:00 a.m. *Id.*

On April 28, 2011, the charging document was filed with the Saipan Immigration Court, thereby vesting this Court with jurisdiction over these proceedings. *See* 8 C.F.R. § 1003.14(a). On April 28, 2011, the Court mailed Respondent a hearing notice to the address he provided at P.O. Box 502957, Saipan, MP 96950, informing him that he is required to appear before an immigration judge at the Saipan Immigration Court on August 9, 2011, at 1:00 p.m. *See* Exhibit 2. The notice also contained the warnings of the consequences for his failure to appear. *Id.*

On April 9, 2011, Respondent failed to appear at the master calendar hearing scheduled for 1:00 p.m. At the hearing, the DHS submitted a copy of the form I-213, *Record of Deportable/Inadmissible Alien*, along with a copy of his passport face page. *See* Exhibit 3.

At 4:00 p.m., the DHS motioned the Court to proceed in Respondent's absence as there was no apparent reason why he did not appear for his hearing scheduled for 1:00 p.m. The Court granted the DHS motion and held an *in absentia* hearing under INA § 240(b)(5)(A), which states that any alien who, after written notice required under paragraph (1) and (2) of section 239(a) has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed *in absentia* if the DHS establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable. The Court found that Respondent was removable as charged under INA § 212(a)(7)(A)(i)(I). Respondent was not present and had not called the Court or the DHS regarding his absence, and the Court ordered Respondent removed from the United States to the Philippines.

On September 7, 2011, Respondent, *pro se*, filed a motion to reopen and rescind the *in absentia* order of removal. In his motion, Respondent asserts he "did not finish high school, uses English as a second-language, and was under so much stress that, in combination, the factors amount to exceptional circumstances that resulted in his failure to understand, remember and appreciate the importance of appearing at the scheduled hearing on August 9, 2011." Respondent also stated that he "was very worried about [his] wife at the time, who was very sick and who left on June 25, 2011 for the Philippines for radiation treatment for 'Graves Disease,'" and he was taking care of his four minor children. Respondent also stated that his "power was disconnected and [his] car had broken down, so that [his] daily circumstances were exceptionally stressful."

On September 14, 2011, the DHS filed a motion in opposition to Respondent's motion to reopen and rescind the order of removal. In its motion, the DHS argues that Respondent has not established that he was not provided with notice in accordance with the Act. Also, the DHS states that Respondent has failed to demonstrate that his failure to appear was on account of exceptional circumstances. The DHS asserts that Respondent's motion should be denied.

## II. Analysis

Although Respondent titled his motion as both a motion to "reopen" and "reconsider," the Court construes Respondent's motion as a motion to reopen and rescind the *in absentia* order of removal, because Respondent does not request that the original decision be reexamined in



light of an error of fact or law, a change of law, or an argument or aspect of the case that was overlooked. *See Matter of Cerna*, 20 I&N Dec. 399 (BIA 1991).

An *in absentia* order of removal may be rescinded *only* upon a motion to reopen filed within 180 days after the date of the order of removal, if the alien demonstrates that the failure to appear was because of “exceptional circumstances” beyond her control, or at any time if the alien demonstrates that she did not receive notice in accordance with the Act or was in federal or state custody. *See* INA § 240(b)(5)(C).

Here, Respondent’s motion to reopen is timely. Respondent does not assert that he did not receive notice of his hearing scheduled for August 9, 2011 at 1:00 p.m. Indeed, the record reflects that he was served with the notice. *See* Exhibit 2.

Rather, Respondent argues that the Court should reopen proceedings and rescind the *in absentia* order of removal because he failed to appear on account of exceptional circumstances. Specifically, Respondent asserts that he missed his hearing because he “did not finish high school, uses English as a second-language, and was under so much stress” that he failed to “understand, remember and appreciate the importance of appearing at the scheduled hearing on August 9, 2011.” Respondent’s Motion. Additionally, Respondent claims that he was taking care of his children, he was worried about his wife who was seeking treatment in the Philippines, and his “power was disconnected and [his] car had broken down, so that [his] daily circumstances were exceptionally stressful.” *See id.*

The term “exceptional circumstances” refers to exceptional circumstances beyond the control of the alien, such as serious illness of the alien or serious illness or death of an immediate relative, but does not include less compelling circumstances. INA § 240(e)(1). This definition contemplates unanticipated circumstances beyond the alien’s control. *See Matter of Shaar*, 21 I&N Dec. 541 (BIA 1996). In determining whether the respondent’s absence was due to “exceptional circumstances” the Court must look at the totality of the circumstances. *See Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

In considering the totality of the circumstances, the Court finds that Respondent has failed to demonstrate exceptional circumstances for his failure to appear and denies his motion to reopen and rescind the *in absentia* order of removal. Respondent has submitted no evidence that he suffered any serious illness, but rather asserts that he was under stress. The Court notes that most aliens in removal proceeding will suffer some form of anxiety and confusion, but there is nothing in the record to demonstrate that Respondent suffered from any ailment sufficient to constitute exceptional circumstances beyond his control. *See Valencia-Fragoso v. INS*, 321 F.3d 1204, 1205 (9th Cir. 2003) (per curiam) (holding that confusion as to a hearing time does not amount to exceptional circumstances); *Matter of J-P-*, 22I&N Dec. 33 (BIA 1998) (finding that the alien’s strong headache did not constitute exceptional circumstances sufficient to excuse his failure to appear). Although Respondent submitted a letter from his wife’s doctor indicating that she suffers from “Graves Disease,” the letter is dated March 22, 2011, and it does not constitute

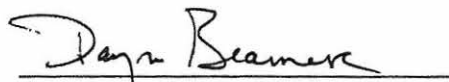
an unanticipated circumstance resulting in his failure to appear, as it is clear that his wife's diagnosis occurred before he was even placed in removal proceedings. While Respondent claims that his power was shut off and his car broke down, he submitted no documentation to support these allegations. *See Celis-Castellano v. Ashcroft*, 298 F.3d 888, 892 (9th Cir. 2002). Moreover, it is unclear when these events allegedly took place and Respondent has failed to demonstrate that these circumstances constitute exceptional circumstances and that these circumstances caused him from appearing at his scheduled hearing. *See Sharma v. INS*, 89 F.3d 545, 547 (9th Cir.1996) (holding that alien's travel delay to court did not constitute "exceptional circumstances").

The Court notes that the majority of Respondent's motion argues that he is not removable under the law; however, these arguments are not the reason for his failure to appear. Additionally, the Court notes that Respondent had the opportunity to articulate these bases before the Court, but he failed to do so. The Court notes that Respondent has filed no applications for relief and does not appear to be eligible for any relief. Further, the Court declines to reopen proceedings *sua sponte*.

ACCORDINGLY, Respondent's motion is denied and the Court enters the following order:

**ORDER**

**IT IS HEREBY ORDERED** that Respondent's motion to reopen and rescind the *in absentia* order of removal is DENIED.

  
DAYNA BEAMER  
Immigration Judge