



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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

Name: QUINTEROS-ARGUETA, ALICIA ... A 098-113-685

Date of this notice: 4/26/2017

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

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

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

Userteam: Docket

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Immigrant & Refugee Appellate Center, LLC | www.irac.net

Falls Church, Virginia 22041

File: A098 113 685 – Las Vegas, NV

Date:

APR 26 2017

In re: ALICIA NOEMY QUINTEROS-ARGUETA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David E. Walters, Esquire

ON BEHALF OF DHS: An Mai Nguyen
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed in absentia on October 19, 2004. On July 21, 2016, the respondent filed a motion to reopen proceedings. The Immigration Judge denied that motion on August 26, 2016, and the respondent filed the instant appeal. The appeal will be sustained, the in absentia order will be vacated, proceedings will be reopened, and the record will be remanded.

Upon de novo review of the record and in light of the totality of circumstances presented in this case we find it appropriate to reopen these proceedings and allow the respondent another opportunity to appear for a hearing before an Immigration Judge. In reaching this conclusion we note that the respondent was a minor at the time she was served with the Notice to Appear and under the control of her mother and uncle. In addition, we note that the respondent is married to a United States citizen and the beneficiary of an approved I-130.

ORDER: The appeal is sustained, the in absentia order is vacated, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.



FOR THE BOARD

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

Law Office of David E Walters
Walters, David Edward
6540 S. Pecos Rd.
Ste. 103
Las Vegas, NV 89120

Date: Aug 26, 2016

File A098-113-685

In the Matter of:
QUINTEROS-ARGUETA, ALICIA NOEMY

✓ 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 9/26/16. 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.

____ Enclosed is a copy of the order/decision of the Immigration Judge.

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

Sincerely,



Immigration Court Clerk

UL

cc: DHS/ICE - Office Of Chief Counsel
3375 Pepper Lane, Ste. 200
Las Vegas, NV 89120

Immigrant & Refugee Appellate Center, LLC | www.irc.net

Department of Homeland Security
Office of Chief Counsel

Alicia Noemy Quinteros-Argueta is a twenty-three year old male from El Salvador. On July 28, 2004, the Immigration and Nationalization Service (INS) initiated removal proceedings against her by filing a NTA with the Court. (Exh. 1.) The government alleged the respondent entered the United States at or near Hidalgo, Texas, on or about June 30, 2004. (*Id.*) The government charged the respondent with being in the United States without being admitted or paroled in violation of Section 212(a)(6)(A)(i) of the Act, as amended. (*Id.*)

At the time of her entry, the respondent was eleven years old. (*Id.*) According to the NTA and the Form I-213, the respondent entered the United States with her mother, her brother, and her uncle. (Exh. 1; Exh. 2.) The NTA states that it was served on the respondent's mother. (Exh. 1.) The respondent appeared at a master calendar hearing on August 10, 2004, along with her brother and uncle. At that hearing, the respondent and her brother were excused from attending future hearings because of their juvenile status unless ordered otherwise by the Court. The respondent's uncle, however, was notified of the consequences of his failure to appear at that hearing and the respondent was present.

On July 21, 2016, the respondent filed a motion to reopen her case, claiming she was not served with the NTA and she was not aware of the consequences of her failure to appear.

II. STATEMENT OF LAW AND ANALYSIS

Sections 239(a)(1) and (2) of the Act provide that service to an alien of a NTA and subsequent written hearing notices "shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record"). In the case of a juvenile under the age of fourteen, the NTA must be served on the person with whom the minor resides. 8 C.F.R. §§ 236.2(a); 103.8(c)(2)(ii). Service of the NTA should also be made on the nearest "relative, guardian, committee, or friend," whenever possible. 8 C.F.R. § 103.8(c)(2)(ii).

In this case, the respondent's mother was served with a copy of the NTA. (Exh. 1.) The government also presented evidence that the juvenile respondent was released into her mother's custody. (Exh. 2.) Thus, despite the respondent's argument to the contrary, the Court finds that the respondent was properly served with the NTA. Moreover, the respondent appeared at the first scheduled master calendar hearing on August 10, 2004, with her uncle and brother. She was excused from future hearings, but her uncle was notified that he must appear for himself and the respondent. He was also warned about the consequences of his failure to appear and that it could result in an *in absentia* order of removal. Given these facts, the Court finds that the respondent's *in absentia* order should not be rescinded because she was placed in the custody of her mother, her mother was served the NTA, and her uncle failed to appear at a hearing when he was required to do so.

The respondent cites to *Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir. 2004) to support her request to reopen her case. *Flores-Chavez*, however, does not apply to this case. In *Flores-Chavez*, the Court was concerned that a responsible adult was not provided notice of the respondent's hearing or the NTA. *Id.* at 1157. That is not the case here. The record evidence demonstrates that the respondent's mother was served the NTA. Moreover, the Court in *Flores-Chavez*, held that the failure of the government to serve a responsible adult "who was charged with providing the [government] with the

address at which [the respondent] could be reached and ensuring [the respondent's] appearance at his hearing. . ." meant that the case should be reopened. *Id.* at 1158. Here, the respondent's mother was served with the NTA, the respondent attended her first hearing, she was excused from future hearings because of her age, and her uncle (a responsible adult) was notified that he must appear at future hearings. Her uncle was also notified of the consequences of his failure to appear. Thus, unlike *Flores-Chavez*, the respondent in this case was properly served the NTA and notified through a responsible adult regarding the consequences of his failure to appear. As a result, this Court denies the motion to reopen because the NTA was properly served on the respondent's mother and the respondent's uncle was notified of the consequence of his failure to appear.

Accordingly, the Court enters the following Orders:

IT IS HEREBY ORDERED that the respondent's motion to reopen her case is **DENIED**;

IT IS FURTHER ORDERED that the Court's previous order removing the respondent *in absentia* remains valid; and

IT IS FURTHER ORDERED that the applicant's case be returned to the DHS for removal of the alien pursuant to the prior order of removal.



Munish Sharda
Immigration Judge

APPEAL RIGHTS: Both parties have the right to appeal the decision of the Immigration Judge in this case. Any appeal is due in the hands of the Board of Immigration Appeals on or before thirty calendar days from the date of service of this decision.

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: () ALIEN (M) ALIEN'S ATTORNEY (P) DHS

DATE: 8/26/16 BY COURT STAFF: parry
