



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 20530

Guerrero, Jose M
Law Office of Jose M. Guerrero
1800 San Pedro Ave
San Antonio, TX 78212

DHS/ICE Office of Chief Counsel - SNA
8940 Fourwinds Drive, 5th Floor
San Antonio, TX 78239

Name: DE HOYOS-NEAVES, RICARDO

A 205-955-074

Date of this notice: 3/19/2015

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:
Guendelsberger, John
Adkins-Blanch, Charles K.
Grant, Edward R.

Userteam: Docket

For more unpublished BIA decisions, visit
www.irac.net/unpublished/index

Falls Church, Virginia 20530

File: A205 955 074 – San Antonio, TX

Date:

MAR 19 2015

In re: RICARDO DE HOYOS-NEAVES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jose M. Guerrero, Esquire

ON BEHALF OF DHS: Elliot R. Selle
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, was ordered removed in absentia on November 5, 2013. On December 5, 2013, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on January 31, 2014. The respondent filed a timely appeal of that decision. The appeal will be sustained, proceedings will be reopened and the record will be remanded.

The Immigration Judge denied the respondent's motion to reopen finding that he failed to establish exceptional circumstances for his failure to appear at his hearing. However, upon review, we find that the totality of circumstances presented in this case constitute exceptional circumstances for the respondent's failure to appear at his hearing. Section 240(e)(1) of the Act; 8 U.S.C. § 1229(e)(1). The respondent's former counsel was suspended from practice of law, and thus his representations to the respondent are not to be taken at face value. Accordingly, we will allow the respondent another opportunity to appear for a hearing.

ORDER: The appeal is sustained, the in absentia order is rescinded, the proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.



FOR THE BOARD

Immigrant & Refugee Appellate Center | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET-SUITE 300
SAN ANTONIO, TX 78207

RODRIGUEZ, JOHNNY, ESQ.
P.O. BOX 5596
SAN ANTONIO, TX 78201

IN THE MATTER OF
DE HOYOS-NEAVES, RICARDO

FILE A 205-955-074

DATE: Feb 5, 2014

UNABLE TO FORWARD - NO ADDRESS PROVIDED

X

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
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 20530

— 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
800 DOLOROSA STREET-SUITE 300
SAN ANTONIO, TX 78207

— OTHER: _____

COURT CLERK
IMMIGRATION COURT

CC: DISTRICT COUNSEL
8940 FOURWINDS DR., 5TH FLOOR
SAN ANTONIO, TX, 782971939

FF

Immigrant & Refugee Appellate Center | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

IN THE MATTER OF)

DE HOYOS-NEAVES, RICARDO)

Case No. A205-955-074

RESPONDENT)

IN REMOVAL PROCEEDINGS)

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended: Alien present in the United States without admission or parole.

APPLICATION: 8 C.F.R. § 1003.23(b): Motion to reopen

ON BEHALF OF THE RESPONDENT

Johnny Rodriguez, Esq.
3018 W. Martin St.
San Antonio, TX 78207

ON BEHALF OF THE GOVERNMENT

U.S. Immigration & Customs Enforcement
Office of the Chief Counsel
8940 Fourwinds Drive, 5th Floor
San Antonio, TX 78239

WRITTEN DECISION & ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

The respondent is a fifty-one-year-old male, native and citizen of Mexico, who arrived in the United States at or near Brownsville, Texas, on or about February 2006. Exhibit 1. On April 16, 2013, the Department of Homeland Security (DHS) personally served the respondent with a Notice to Appear (NTA), charging him as removable pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), as amended, for being present in the United States without admission or parole. *Id.*

The NTA contains a section titled “**Failure to appear**” that specifies, *inter alia*, the consequences of failing to appear for any scheduled hearings. Exhibit 1. The NTA reflects that the respondent was advised of the consequences of non-appearance in the Spanish language. *Id.*

On May 14, 2013, the Court mailed to the respondent’s counsel of record a notice of hearing for a November 5, 2013 hearing. *See* Exhibit 2. On November 5, 2013, the respondent was not present for his hearing and was unavailable for examination under oath. Pursuant to the authority provided in section 240(b)(5)(a) of the Act, the Court proceeded *in absentia* and

ordered the respondent removed from the United States to Mexico on the charge contained in the NTA.

On December 5, 2013, the respondent filed with the Court a motion to reopen his removal proceedings. DHS did not file a response to the respondent's motion.

II. Motion to Reopen

An *in absentia* order of removal may be rescinded only (i) 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, or (ii) upon a motion to reopen filed at any time if the alien demonstrates that he did not receive notice in accordance with paragraph (1) or (2) of section 239(a) of the Act or the alien demonstrates that he was in Federal or State custody and the failure to appear was through no fault of his own. Section 240(b)(5)(C) of the Act; 8 C.F.R. § 1003.23(b)(4)(ii).

A. Exceptional Circumstances

The respondent does not claim any exceptional circumstances. *See* Respondent's Motion. Because the respondent has not claimed any exceptional circumstances he cannot establish his failure to appear was because of exceptional circumstances. *See* Section 240(b)(5)(C) of the Act; 8 C.F.R. § 1003.23(b)(4)(ii).

B. Notice

Notice to an alien *must* be served upon the alien's counsel of record. 8 C.F.R. § 1292.5(a) (emphasis added). Notice to the alien's counsel is deemed notice to the alien. *See Matter of Barocio*, 19 I&N Dec. 255, 259 (BIA 1985). On May 14, 2013, the Court mailed to Mr. Guerrero, the respondent's counsel of record, a notice of hearing for the November 5, 2013 hearing. *See* Exhibit 2.

Current counsel for the respondent claims the respondent never received notice of his hearing. *See* Respondent's Motion. However, respondent admits his prior counsel, Mr. Guerrero, received the notice of hearing from the Court and mailed it to the respondent via first class mail. *See id.* at Tab B. The Court notes there is no claim of ineffective assistance of counsel in the motion.

The respondent has not provided an explanation for his failure to communicate with his prior counsel between the date the case was set for a hearing, May 14, 2013, and the date of his hearing, November 5, 2013. *See* Respondent's Motion. There is nothing in the record from prior counsel regarding any other communication or explanation of the lack of communication between the respondent and prior counsel. The only statement in the record is that prior counsel did in fact receive the notice of hearing and mail it to the respondent via first class mail. *See id.*


Because notice to the respondent's counsel of record is deemed notice to the respondent and because the respondent has not explained why he did not maintain communication with his prior counsel, the Court finds that notice of hearing was properly provided to the respondent. *See Matter of Barocio*, 19 I&N Dec. at 259. Therefore, the respondent has not established that his failure to appear was due to a lack of notice or through no fault of his own. Section 240(b)(5)(C) of the Act; 8 C.F.R. § 1003.23(b)(4)(ii).

Accordingly, the following order is hereby entered:

ORDER

IT IS HEREBY ORDERED that the respondent's motion to reopen is **DENIED**.

Date: JAN. 31, 2014



Glenn P. McPhaul
United States Immigration Judge