



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 22041

**Levine, Kenneth Sylvan
Levine & Eskandari, LLC
P.O. Box 674138
Marietta, GA 30006**

**DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303**

Name: AHMAD, ADELIYA MUBARIKA

A 096-297-241

Date of this notice: 10/14/2016

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:
Mann, Ana

Userteam: Docket

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www.irac.net/unpublished/index/**

Falls Church, Virginia 22041

File: A096 297 241 – Atlanta, GA

Date:

OCT 14 2016

In re: ADELIYA MUBARIKA AHMAD

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kenneth S. Levine, Esquire

APPLICATION: Reopening

The respondent has appealed the Immigration Judge's decision dated November 5, 2015, denying her motion to reopen. The Immigration Judge had previously ordered the respondent removed in absentia for her failure to appear at the hearing on June 18, 2009. We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii). The record will be remanded to the Immigration Judge.

In her motion to reopen, the respondent asserts that she failed to appear at her removal hearing due to exceptional circumstances, specifically, the ineffective assistance of her former attorney, and because she lacked notice. In denying her motion, the Immigration Judge found that the respondent received sufficient notice and that she failed to use due diligence in filing her motion to reopen. However, the Immigration Judge did not address the respondent's claim of ineffective assistance of counsel or her request for sua sponte reopening. Under the particular circumstances of this case, we find it appropriate to remand the record to the Immigration Judge for further consideration of this claim and the entry of a new decision. See 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding ability on appeal).

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further consideration of the respondent's motion to reopen.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
180 TED TURNER DR SW, STE. 241
ATLANTA, GA 30303

Levine & Eskandari, LLC
Levine, Kenneth Sylvan
P.O. Box 674138
Marietta, GA 30006

IN THE MATTER OF
AHMAD, ADELIYA MUBARIKA

FILE A 096-297-241

DATE: Nov 9, 2015

___ 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
5107 Leesburg Pike, Suite 2000
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
180 TED TURNER DR SW, STE. 241
ATLANTA, GA 30303

OTHER: Order

WRC
COURT CLERK
IMMIGRATION COURT

FF

CC: DTB
"Atty. Resp"

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

U.S. DEPARTMENT OF JUSTICE
Executive Office for Immigration Review
Office of the Immigration Judge

In the Matter of:

A DELIYA AHMAD

RESPONDENT/APPLICANT

Case No.: A 096 297 241

Docket: 17-121A, 62

IN Removal PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of respondent's/applicant's

- ☐ Motion to Reconsider an Immigration Judge's decision
☒ Motion to Reopen proceedings

filed in the above entitled matter, it is **HEREBY ORDERED** that the motion

- ☐ be granted.
☒ be denied for the reasons indicated in the attached decision.

Respondent was served with a notice to appear + notice of hearing + failed to appear + was ordered removed on June 9, 2009. A copy of the William A. Casey Immigration Judge
Immigration Judge
Date: 11/5/15
Immigrant & Refugee Appellate Center (IRAC) www.irac.net

Respondent was informed of the
Immigration Judge's order on 6/24/09 but failed to use due
diligence. The motion to Reopen was filed 6 years too late
and only after an I-130 was filed.

Respondent also changed address w/o notification to
the court as required.

Appeal: RESERVED/WAIVED (A/I/B)



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