



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

**Finn, Gary
Law Office of Gary Finn
82632 Highway 111
Indio, CA 92201**

**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: MARQUEZ PADILLA, FELIX ALB... A 076-376-736

Date of this notice: 10/5/2018

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:
Grant, Edward R.
Kendall Clark, Molly
Guendelsberger, John

Userteam: Docket

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Handwritten initials/signature

Falls Church, Virginia 22041

File: A076-376-736 – Los Angeles, CA

Date:

OCT - 5 2018

In re: Felix Alberto MARQUEZ PADILLA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gary W. Finn, Esquire

APPLICATION: Reopening

The respondent is a native and citizen of Mexico. He was ordered removed in absentia on June 7, 2005, and filed a motion to reopen with the Immigration Judge on January 2, 2018. He has filed an appeal concerning an Immigration Judge's decision, which was mailed on January 25, 2018. That decision declined to reopen the proceedings. The respondent submitted a brief to us concerning the decision of the Immigration Judge, while the Department of Homeland Security (DHS) did not provide a brief. The respondent's appeal will be sustained, and the record will be remanded to the Immigration Court for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

An order entered in absentia may be reopened at any time if the alien demonstrates that he did not receive notice in accordance with section 239(a)(1) or (2) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229(a)(1), (2). See section 240(b)(5)(C)(ii) of the Act, 8 U.S.C. § 1229a(b)(5)(C)(ii); 8 C.F.R. § 1003.23(b)(4)(ii); *Matter of M-R-A-*, 24 I&N Dec. 665, 671 (BIA 2008); Respondent's Br. at 3-4.

On July 16, 2004, a "Notice of Hearing in Removal Proceedings" was sent to the respondent's former counsel. The "Notice of Hearing in Removal Proceedings" noted that a removal hearing would be held before the Los Angeles, California, Immigration Court concerning the respondent, on June 7, 2005, at 1:00 pm. However, the July 16, 2004, "Notice of Hearing in Removal Proceedings" also contained another notice, stamped in large-case red letters: "PARKING DATE ONLY. CASE WILL BE RESET."

The July 16, 2004, "Notice of Hearing in Removal Proceedings" did not provide proper notice of the "time or place of the proceedings," section 239(a)(2)(A)(i) of the Act, because the notice alternatively stated that (1) a hearing would be held on June 7, 2005, and (2) the case would be reset. The internally conflicting information on the July 16, 2004, "Notice of Hearing in Removal Proceedings" did not provide proper notice of a removal hearing, within the meaning of section 239(a)(1) or (2) of the Act. See *Matter of Bermudez-Cota*, 27 I&N Dec. 441, 447 (BIA 2018) ("[A] notice to appear that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the

requirements of section 239(a) of the Act, *so long as* a notice of hearing specifying this information is later sent to the alien”)(emphasis added); Respondent’s Br. at 5-6.¹

Because the respondent established lack of notice concerning the June 7, 2005, removal hearing, rescission of the in absentia order is warranted. *See* 8 C.F.R. § 1003.23(b)(4)(ii). Accordingly, the following orders are entered.

ORDER: The respondent’s appeal is sustained, and the Immigration Judge’s decision is vacated.

FURTHER ORDER: The respondent’s motion to reopen is granted, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

¹ The respondent also stated, in an affidavit included with the motion to reopen, that “someone” at the Immigration Court had told him that he did not have to appear on June 7, 2005 (Respondent’s Br. at 4).