



**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

**PATEL, DILIPKUMAR DASHRATHBHAI  
4800 N SPRINGFIELD AVE APT 208  
CHICAGO, IL 60625-6283**

**DHS/ICE Office of Chief Counsel - HLG  
1717 Zoy Street  
Harlingen, TX 78552**

**Name: PATEL, DILIPKUMAR DASHRAT...      A 200-939-111**

**Date of this notice: 6/6/2014**

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:  
Holmes, David B.

TranC  
User team: Docket

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*Kj*

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 20530

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File: A200 939 111 – Harlingen, TX

Date: JUN 06 2014

In re: DILIPKUMAR DASHRATHBHAI PATEL

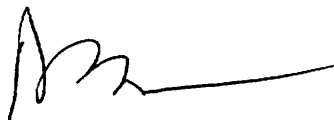
IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se<sup>1</sup>

The respondent has filed a motion requesting that we reissue the February 7, 2014, decision of the Board in his proceedings due to weather-related circumstances which not only closed counsel for the respondent's office for two weeks, but also resulted in the eventual delivery of badly damaged mail – including the Board's decision. The Department of Homeland Security (DHS) has not opposed the respondent's motion. Considering the totality of the circumstances presented, the unopposed motion is granted.

ORDER: The Board's order of February 7, 2014, attached hereto, is hereby reissued and shall be treated as entered on today's date.



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FOR THE BOARD

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<sup>1</sup> While the motion to reissue was filed on the respondent's behalf by Attorney Frank B. Lindner, Attorney Lindner has not entered his appearance as attorney of record on a Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals), the Board does not recognize Attorney Lindner as the attorney of record in this case.

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Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 20530

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File: A200 939 111 – Harlingen, TX

Date: FEB - 7 2014

In re: DILIPKUMAR DASHRATHBHAI PATEL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Frank B. Lindner, Esquire

ON BEHALF OF DHS: Abraham Burgess  
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of India, was ordered removed in absentia on August 25, 2011. On March 30, 2012, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on May 10, 2012. The respondent filed a timely appeal of that decision. The appeal will be dismissed.

Pursuant to section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C), an in absentia removal order may be rescinded only (1) 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 (2) upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in accordance with sections 239(a)(1) or (2) of the Act, or that the alien was in Federal or State custody and did not appear through no fault of the alien. Sections 240(b)(5)(C)(i) and (ii) of the Act; *see also Matter of Guzman*, 22 I&N Dec. 722, 723 (BIA 1999).


We affirm the Immigration Judge's decision. We agree that the respondent has not rebutted the presumption of effective service by establishing improper delivery of the notice for his hearing. The record reflects that the Notice to Appear (NTA) (Exh. 1) was personally served and the notice for the August 25, 2011, hearing (NOH) was sent by regular mail to the address the respondent provided.

The respondent contends that he did not receive notice for his hearing and in support of his motion, he submitted his own affidavit. However, the affidavit lacks detail and without more, is not sufficient to overcome the presumption of proper service of the notice for his hearing. There is no evidence of record that the notice for the August 25, 2011, hearing was returned or otherwise was undeliverable to the respondent's address. Moreover, there were no prior applications of record for relief that would indicate an incentive to appear at the hearing.

A200 939 111

In view of these circumstances, the respondent has not presented sufficient evidence to overcome the presumption of proper delivery of the NOH. *See Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

  
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FOR THE BOARD