



**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

**Lluis, Ramiro Jose  
R J Lluis & Associates  
205 S. Broadway, #1000  
Los Angeles, CA 90012**

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

**Name: RIVERA, SAMUEL ANTONIO**

**A 205-719-877**

**Date of this notice: 4/15/2015**

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

Userteam: Docket

**For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)**

*ky*

Falls Church, Virginia 20530

---

File: A205 719 877 – Los Angeles, CA

Date:

APR 15 2015

In re: SAMUEL ANTONIO RIVERA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ramiro J. Lluís, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, appeals from a decision dated September 22, 2014, by the Immigration Judge in which she denied the respondent's motion to reconsider the Immigration Judge's denial of a motion to reopen removal proceedings, which had been conducted in absentia on September 11, 2013. The respondent filed a timely appeal from that decision. The Department of Homeland Security (DHS) has filed no reply to the appeal. The appeal will be sustained, proceedings will be reopened and the record will be remanded.

Upon de novo review, in light of the totality of circumstances presented in this case, including the respondent's apparent eligibility for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), and lack of motive to avoid the hearing, the respondent's apparent late arrival at his hearing, his diligence in filing a motion to reopen, and the absence of DHS opposition to both the motion and appeal, we will sustain the appeal and allow the respondent another opportunity to appear for a hearing. *See Chete Juarez v. Ashcroft*, 376 F.3d 944, 948 (9th Cir. 2004), *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000) (stating that "exceptional circumstances" determination requires consideration of totality of circumstances and particularized facts presented in each case).

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

Immigrant & Refugee Appellate Center | [www.iraac.net](http://www.iraac.net)

DATE: Sep 25, 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  
606 SOUTH OLIVE ST.  
LOS ANGELES, CA 90014

X OTHER: PLEASE SEE ATTACHED

KIM WOOTEN  
COURT CLERK  
IMMIGRATION COURT

FF

CC: GASIOR, MALGORZATA, ESQ.  
606 SO. OLIVE ST., 8TH FLOOR  
LOS ANGELES, CA, 900140000

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
LOS ANGELES, CALIFORNIA**

File No.:       **A 205 719 877**

In the Matter of:

**RIVERA, Samuel Antonio,**

**IN REMOVAL PROCEEDINGS**

Respondent

**CHARGE:**               Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA)  
                              (2013) – *present without admission or parole*

**APPLICATIONS:**   Respondent's Motion to Reconsider the Denial of his Motion to Reopen

**ON BEHALF OF RESPONDENT:**

Ramiro J. Lluís, Esquire  
RJLLuis and Associates  
205 South Broadway, Unit 1000  
Los Angeles, California 90012

**ON BEHALF OF THE GOVERNMENT:**

Malgorzata Gasior, Assistant Chief Counsel  
U.S. Department of Homeland Security  
606 South Olive Street, Eighth Floor  
Los Angeles, California 90014

**DECISION AND ORDER OF THE IMMIGRATION JUDGE**

**I.       Procedural History**

Samuel Antonio Rivera (Respondent) is a native and citizen of El Salvador. On June 28, 2013, the Government personally served Respondent with a Notice to Appear (NTA). Ex. 1. In the NTA, the Government alleged that Respondent entered the United States at an unknown place at an unknown time, and was not then admitted or paroled after inspection by an immigration officer. *Id.* Accordingly, the Government charged Respondent as removable under section 212(a)(6)(A)(i) of the INA. *Id.* Jurisdiction vested and removal proceedings commenced when the Government filed the NTA with the Court on July 11, 2013. *Id.*; *see* 8 C.F.R. § 1003.14(a) (2013).

On July 31, 2013, the Court mailed a notice of hearing to Respondent's address of record. The notice informed Respondent of his master calendar hearing scheduled for September 11, 2013.

On September 11, 2013, Respondent failed to appear for his scheduled hearing. Accordingly, the Court proceeded *in absentia*. The Government submitted evidence of removability relating to the allegations and charges contained in the NTA. Finding removability established by clear, convincing, and unequivocal evidence, the Court ordered Respondent

removed to El Salvador. On the same day, the Court mailed Respondent a copy of its order of removal.

On October 10, 2013, Respondent filed a motion to reopen, arguing that he was confused about the address to which he was to report. On November 4, 2013, the Court denied Respondent's motion for lack of cause.

On July 23, 2014, Respondent filed the instant motion to reconsider, alleging ineffective assistance of the counsel who drafted his motion to reopen, and that the original motion failed to note that Respondent "made every effort possibly to quickly make it to court" on his scheduled hearing date. See Respondent's Motion at 4. For the following reasons, the Court will deny Respondent's motion to reconsider.

## II. Law and Analysis

A motion to reconsider requests that the Court reexamine its original decision in light of additional legal arguments, an argument or aspect of the case that was overlooked, or a change in the law. Matter of Cerna, 20 I&N Dec. 399, 402 (BIA 1991). The motion must specify the errors of fact or law in the Court's prior decision, and must be supported by pertinent authority. 8 C.F.R. § 1003.23(b)(2) (2014). Moreover, the Court must reconsider the case at issue using the same record of evidence used in making its prior decision. See Iturribarria v. INS, 321 F.3d 889, 895 (9th Cir. 2003). As such, a respondent may not use a motion to reconsider as a mechanism for presenting new facts previously unaddressed in his motion to reopen. Mohammed v. Gonzales, 400 F.3d 785, 792 n.8 (9th Cir. 2005).

In the pending motion, Respondent requests that this Court reconsider the denial of his motion to reopen. Specifically, Respondent's current counsel asserts that the Court made an error of fact in not considering that Respondent "lost the notice and that he made every effort possible to quickly make it to court." Respondent's Motion at 4. The Court may not rely on the bare statements of counsel as evidence. See INS v. Phinpathya, 464 U.S. 183, 188-89 n.6 (1984) (stating that counsel's unsupported assertions in a brief are not entitled to evidentiary weight); see also Sembiring v. Gonzales, 499 F.3d 981, 984 (9th Cir. 2007) ("[S]tatements in motions are not evidence and are, therefore, not entitled to evidentiary weight."). Turning to Respondent's own statements, the Court notes that Respondent merely attests that he "could not find the appointment letter among all the papers I had." Respondent's Motion at 9. However, this Court may only consider the record of evidence used in making its prior decision. See Iturribarria, 321 F.3d at 895. Thus, Respondent's affidavit, which was submitted for the first time with the present motion, is not under consideration at this time.

Insofar as Respondent argues that his failure to succeed on his motion to reopen is due to the ineffective assistance of his former counsel, Respondent must demonstrate that he suffered prejudice or harm as a result of his counsel's ineffective performance. See Maravilla v. Ashcroft, 381 F.3d 855, 858 (9th Cir. 2004). Even assuming that Respondent's motion to reopen was improperly prepared by his former counsel, the Court would still have denied Respondent's motion, given his failure to explain adequately why he did not appear at his hearing. In rejecting the motion to reopen, the Court properly noted that Respondent received constructive notice of

his hearing on September 11, 2013, because the Court mailed the NTA to Respondent's most recent address of record. See IJ Decision (Oct. 29, 2013). Accordingly, Respondent has not demonstrated that he suffered prejudice or harm due to his counsel's alleged ineffective performance. See id.

Based on the foregoing, and after an independent review of its prior decision, the Court finds no errors of law or fact in its decision denying Respondent's motion to reopen. See 8 C.F.R. § 1003.23(b)(2).

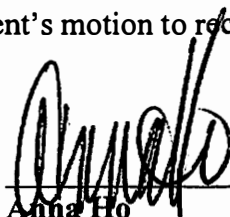
Accordingly, the following order shall be entered:

**ORDER**

**IT IS HEREBY ORDERED** that Respondent's motion to reconsider be **DENIED**.

DATE:

Sept 22, 2014



Anna Ho

Immigration Judge

**Appeal Rights:** Both parties have the right to appeal the decision in this case. Any appeal is due at the Board of Immigration Appeals within thirty (30) calendar days of the mailing of this decision. 8 C.F.R. § 1003.38.

**CERTIFICATE OF SERVICE**

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

TO: ( ) ALIEN ( ) ALIEN c/o Custodial Officer ( ) ALIEN'S ATT/REP ( ) DHS

DATE:

9/25/14

BY COURT STAFF:



Attachments: ( ) EOIR-33 ( ) EOIR-28 ( ) Legal Services List ( ) Other