



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: GONZALEZ-MELGAR, JAIRO NOE A 089-767-719

Date of this notice: 8/14/2019

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:
Greer, Anne J.
Cole, Patricia A.
Donovan, Teresa L.

Userteam: Docket

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Falls Church, Virginia 22041

File: A089-767-719 – Charlotte, NC

Date:

AUG 14 2019

In re: Jario Noe GONZALEZ-Melgar

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James Gilchrist, Esquire

ON BEHALF OF DHS: Hilary Rainone
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals the decision of the Immigration Judge, dated January 31, 2018, denying his motion to reopen. The Department of Homeland Security (“DHS”) argues that the Immigration Judge’s decision is correct and should be affirmed. The appeal will be sustained.

Upon consideration of the totality of the record, we are satisfied that the respondent has established that the order of removal, entered in absentia on September 23, 2009, should be rescinded under the provisions of section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(ii). In particular, the evidence that the respondent has presented below and on appeal sufficiently establishes that, at the time of his removal hearing, he was being detained at a North Carolina county jail awaiting his hearing. *See Matter of Evra*, 25 I&N Dec. 79 (BIA 2009).

On appeal the DHS argues that the respondent did not submit sufficient evidence to establish that he did not post bond and remained incarcerated prior to his criminal hearing, i.e. that he was in jail on the date of his removal hearing. We find that argument unpersuasive. The respondent provided a copy of the conditions of release and release order, which provides that bond was set at \$1,000. The portion of the document which would reflect the respondent’s release remains unfilled. In other words, the sections of the document which requires the jailer’s signature and the accused’s promise to appear have not been signed and dated. The absence of signatures signifies that the respondent was not released prior to his hearing. Additionally, the respondent provided a written statement explaining that he did not have enough money to post bond and that he remained detained in county jail at the time of his immigration hearing. Thus, the evidence reflects that the respondent was not released on bond prior to his criminal hearing.

Accordingly, we will reopen these proceedings in order to provide the respondent with an additional opportunity to appear for a removal hearing. The following order is entered.

ORDER: The in absentia order of removal, entered on September 23, 2009, is rescinded, these removal proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD