



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

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

Name: ALCANTAR-VEGA, SANDRA

A 205-717-119

Date of this notice: 5/5/2015

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.

21
User team: Docket

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Falls Church, Virginia 20530

File: A205 717 119 – Los Angeles, CA

Date: **MAY - 5 2015**

In re: SANDRA ALCANTAR-VEGA a.k.a. Sandra Alcantar

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se¹

APPLICATION: Reopening

The respondent appeals from the Immigration Judge's May 28, 2014, decision denying her motion to reopen her removal proceedings.² The respondent was ordered removed in absentia on March 18, 2014. The record will be remanded to the Immigration Judge.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i) (2013). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion and judgment. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge did not prepare a separate oral or written decision in this matter, but instead noted the following on the order denying the motion, "motion fails to comply with 8 C.F.R. § 1003.23(b)(3)." However, the Immigration Judge did not address the respondent's claim that her proceedings should be reopened because she was wrongfully ordered removed in absentia (Resp. Mot. to Reopen at 3, 6). Section 240(b)(5) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1229a(b)(5). Specifically, the respondent claimed in her motion to reopen that, due to her pregnancy, she became sick in the car on the way to the hearing and was delayed by several hours (Resp. Mot. to Reopen at 3). She claims she appeared at the court, but the order of removal had already been entered and she was advised to file a motion to reopen (*Id.*).

On appeal, we cannot make the findings of fact needed to assess the validity of the respondent's claim. *See* 8 C.F.R. § 1003.1(d)(3)(iv). Thus, we will remand these proceedings to the Immigration Judge for a more complete decision. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002); *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). On remand, the Immigration Judge shall assess, in the first instance, whether the respondent arrived late, or not at all, to her hearing;

¹ The respondent was initially represented by attorney Joan Del Valle when the instant appeal was filed. However, on September 8, 2014, the Board issued a notice allowing Ms. Valle to withdrawal as counsel of record in this matter. As the respondent has not submitted any notice of new counsel, she now proceeds pro se.

² While the Immigration Judge issued her decision on May 28, 2014, the decision was not mailed until June 3, 2014. Accordingly, the appeal is timely.

and, if necessary, whether exceptional circumstances warrant reopening these proceedings. Compare e.g. *Perez v. Mukasey*, 516 F.3d 770 (9th Cir. 2008) (holding that an alien who arrived two hours late for his immigration hearing, but while IJ was still in the courtroom, did not fail to appear for that hearing); *Jerezano v. INS*, 169 F.3d 613 (9th Cir. 1999) (explaining that while traffic delays are generally not considered exceptional circumstances, delayed appearances are not nonappearances for purposes of reopening); *Romani v. INS*, 146 F.3d 737 (9th Cir. 1998) (finding no failure to appear when alien appeared at courthouse but was improperly told by counsel's staff not to enter courtroom); with *Valencia-Fragoso*, 321 F.3d 1204 (9th Cir. 2003) (holding that a four and one-half hour tardy appearance was a failure to appear); see also section 240(e)(1) of the Act (defining exceptional circumstances as circumstances "such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances").

In remanding this matter we express no opinion as to the ultimate outcome of this case. The following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
606 SOUTH OLIVE ST.
LOS ANGELES, CA 90014

JOAN DEL VALLE, ESQ
6457 WHITTIER BLVD.
LOS ANGELES, CA 90022

IN THE MATTER OF
ALCANTAR-VEGA, SANDRA

FILE A 205-717-119

DATE: Jun 3, 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: _____

See attached order


COURT CLERK
IMMIGRATION COURT

CC: SHARRON KEARNEY ESQ
606 S. OLIVE ST, 8TH FLOOR
LOS ANGELES, CA, 90014

FF

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

In the Matter of: **SANDRA ALCANTAR VEGA**

File No. A 205-717-119

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Motion to Reopen, it is HEREBY ORDERED that the motion be
___ GRANTED, ☒ DENIED because:

___ DHS does not oppose the motion.

___ The respondent does not oppose the appeal.

___ A response to the motion has not been filed with the court.

___ Good cause has been established for the continuance.

☒ Other: *Motion fails to comply with
8 CFR § 1003.23(b)(3).*

5/28/14

DATE

[Signature]
IMMIGRATION JUDGE

Certificate of service:

This document was served by ___ mail ☒ personal service

To: ___ Alien

___ Alien with custodial Officer

☒ Alien's Attorney/ Representative

☒ DHS

Date: *6/3/14*

By: *Am*