



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Boston, MA 02114**

**Name: PENA-YUNGASACA, WILSON E...      A 200-826-015**

**Date of this notice: 12/30/2016**

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.  
Mann, Ana  
O'Connor, Blair

Userteam: Docket

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Falls Church, Virginia 22041

File: A200 826 015 – Boston, MA

Date:

DEC 30 2016

In re: WILSON EDUARDO PENA-YUNGASACA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Randy Feldman, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Ecuador, was ordered removed in absentia on September 25, 2014. On October 20, 2014, the respondent filed a motion to reopen proceedings, which an Immigration Judge denied on December 22, 2014. The respondent filed a timely appeal of that decision. The appeal will be sustained, the Immigration Judge's order will be vacated, proceedings will be reopened and the record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the clearly erroneous standard. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo.

Upon de novo review of the record and in light of the totality of circumstances presented in this case, we conclude that the respondent demonstrated that reopening is warranted.<sup>1</sup> See sections 240(b)(5)(C)(i), (e)(1) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(b)(5)(C)(i), (e)(1). We will therefore sustain the respondent's appeal and remand the record for further proceedings.

ORDER: The respondent's appeal is sustained, the in absentia order is vacated, proceedings are reopened and the record is remanded to the Immigration Judge for further proceedings and for the entry of a new decision.<sup>2</sup>

  
\_\_\_\_\_  
FOR THE BOARD

<sup>1</sup> Among other factors, we have considered the respondent's sworn affidavit, his attendance at prior hearings, his diligence in pursuing his status, his filing of an application for withholding of removal and that his nonappearance at his hearing was the result of an inadvertent mistake and not an attempt to avoid proceedings.

<sup>2</sup> We note that the Immigration Judge's form order adopting the opposition filed by the Department of Homeland Security is not proper under the applicable regulations or our precedents. See *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). In denying a motion to reopen, an Immigration Judge must set forth in a separate decision the reasons for the denial.

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
JFK FEDERAL BLDG., ROOM 320  
BOSTON, MA 02203

LAW OFFICES OF RANDY FELDMAN  
FELDMAN, RANDY S.  
500 MAIN STREET, SUITE 510  
WORCESTER, MA 01608

IN THE MATTER OF  
PENA-YUNGASACA, WILSON EDUARDO

FILE A 200-826-015

DATE: Jan 16, 2015

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

\_\_\_ 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  
JFK FEDERAL BLDG., ROOM 320  
BOSTON, MA 02203

\_\_\_ OTHER: IT Order

B  
COURT CLERK  
IMMIGRATION COURT

CC:

FF

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BOSTON, MA

In the matter of: Wilson PENA-YUNGASACA ALIEN No.: 200-826-015

**Order of the Immigration Judge**

Upon consideration of ["the respondent's" or "DHS's"] Motion to Reopen Removal Proceedings and Rescind In Absentia Order, it is HEREBY ORDERED that the motion be **GRANTED** **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☒ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per \_\_\_\_\_.
- ☐ Other:

**Deadlines:**

- ☐ The application(s) for relief must be filed by \_\_\_\_\_.
- ☐ The respondent must comply with DHS biometrics instructions by \_\_\_\_\_.

12-22-2014  
Date

BOMalley  
Immigration Judge

**Certificate of Service**

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Date: 1-15-16 By: Court Staff BS