U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Falls Church, Virginia 22041

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LINDNER & LINDNER, PC
205 FLORAL VALE BLVD.,
YARDLEY, PA 19067

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

Name: BARBOSA SANTOS, LETICIA A...

A 206-803-700

Date of this notice: 6/9/2017

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

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Wendtland, Linda S.
Pauley, Roger
Greer, Anne J.

Userteam: Docket

File: A206 803 700 – Harlingen, TX Date: JUN - 9 2017

In re: LETICIA APARECIDA BARBOSA SANTOS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Frank Billings Lindner, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Reopening

The respondent, a native and citizen of Brazil, has appealed from the decision of the Immigration Judge dated November 5, 2015. In that decision, the Immigration Judge denied the respondent's October 9, 2015, motion to reopen the proceedings and rescind the in absentia order of removal entered on September 2, 2015, pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(A). The motion to reopen is based on the claim that the respondent did not receive the November 3, 2014, hearing notice, which was delivered by regular mail to 34 A 6th Avenue, Long Branch, NJ 07740 (I.J. at 1-2). In addition, the October 9, 2015, motion requests a change of venue to the Immigration Court in Newark, New Jersey, and this request is supported by appropriate evidence. For the following reasons, the respondent's appeal will be sustained, and the record will be reopened and remanded to the Newark, New Jersey Immigration Court for further proceedings.

The Immigration Judge determined that the respondent has not rebutted the (weaker) presumption of receipt by regular mail because the November 3, 2014, hearing notice was not returned to the Immigration Court after attempted, but unsuccessful delivery. *See Matter of C-R-C-*, 24 I&N Dec. 677 (BIA 2008); *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008); *see also Torres-Hernandez v. Lynch*, 825 F.3d 266 (5th Cir. 2016). In addition, the Immigration Judge took into consideration the statements provided by the respondent, the respondent's United States citizen bond obligor and former cohabitant, Marlon Ferreira, and the respondent's former counsel, Paulo Rocha, Esquire.

The respondent's former counsel stated that he entered an appearance on behalf of the respondent before the Department of Homeland Security ("DHS") on June 27, 2014, and in securing her release on a bond of $7,500.00, provided the address of Marlon Ferreira: 929 Van Court Avenue, Long Branch, NJ 07740 (Respondent's M.T.R. at Tab C). The attorney's statement also reflects that he requested a credible fear interview for the respondent, and that she was subsequently determined to have a credible fear (Respondent's M.T.R. at Tab C).

Marlon Ferreira's statement confirms the address indicated in the attorney's statement and that the respondent resided at this address with him "until very recently" (Respondent's M.T.R. at Tab D). His statement also indicated that he is the obligor of the $7,500.00 bond, and that on September 8, 2015, he received correspondence directing him to deliver the respondent to the DHS for an appointment on October 9, 2015, in Harlingen, Texas (Respondent's M.T.R. at Tab D). Marlon Ferreira denied receiving any other immigration-related correspondence related to the respondent.

The respondent's statement is consistent with the other statements (Respondent's M.T.R. at Tab B). In addition, the respondent reported that she provided the names and contact information for her attorney and the bond obligor at the credible fear interview (Respondent's M.T.R. at Tab B). The respondent has denied receiving the November 3, 2014, hearing notice or any other correspondence related to these proceedings (Respondent's M.T.R. at Tab B).

The Immigration Judge determined that these statements are insufficient to overcome the presumption of effective delivery by regular mail because they have not addressed the "discrepancy in the address provided by the respondent upon her release and the address Marlon Ferreira has provided in his statement" (I.J. at 2). However, the respondent has stated that she cannot understand English (Respondent's M.T.R. at Tab B). And there is no indication that the respondent or her representatives have been able to personally inspect the record of proceedings after the entry of the in absentia removal order. Hence, if the address reflected on the ICE Form I-830E, Notice to EOIR: Alien Address dated July 17, 2014, 34 A 6th Avenue, Long Branch, NJ 07740, is not the address provided by the respondent or her representative – as is indicated in the motion to reopen statements – then there would no way for the respondent to be aware of that address and be able to address it in the motion to reopen.

Moreover, the Form I-870, Record of Determination/Credible Fear Worksheet in the record of proceedings corroborates the fact that the respondent provided the names and contact information for her attorney and the bond obligor at the credible fear interview. We acknowledge that the DHS is ordinarily entitled to a presumption of regularity in the keeping of its records. *See United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). However, the statements presented in support of the motion to reopen, as well as the diligence with which they have been presented, suffice to overcome the presumption that the address on the ICE Form I-830E, Notice to EOIR: Alien Address correctly reflects the address provided by the respondent. *See Matter of M-R-A-*, *supra*, at 676 ("[W]e consider a significant factor to be the respondent's due diligence in promptly seeking to redress the situation by obtaining counsel and requesting reopening of the proceedings.").

Inasmuch as the Immigration Judge determined that the in absentia order should not be rescinded, he did not address the respondent's motion for a change of venue. We take administrative notice that the request for a change of venue contains a fixed address for the respondent and a properly completed Alien's Change of Address Form ("Form EOIR-33/BIA"), as is required under 8 C.F.R. § 1003.20(c), and section 5.10(c) of the Office of the Chief Immigration Judge, Immigration Court Practice Manual (Respondent's M.T.R. at Tab G).

See 8 C.F.R. § 1003.1(d)(3)(iv).[1] The respondent has renewed her request for a change of venue on appeal. The Department of Homeland Security has not opposed the respondent's motion, either before the Immigration Judge or on appeal. In view of the motion's compliance with the requirements for a change of venue, the renewal of the request on appeal, and the non-opposition to the request, we conclude that good cause has been shown, and therefore, we will grant the request and transfer venue to the Newark, New Jersey Immigration Court.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the record is reopened and remanded to the Newark, New Jersey Immigration Court for further proceedings.

FOR THE BOARD

[1] We acknowledge that, technically, the respondent submitted the incorrect Form EOIR-33. Rather than submit the change of address form used in Immigration Court – Form EOIR-33/IC – she submitted the form used at this Board – Form EOIR-33/BIA.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
2009 W. JEFFERSON AVE, STE 300
HARLINGEN, TX 78550

Ambrosio and Associates
Ambrosio Farias, Elisa C
292 Lafayette Street
2nd Floor
Newark, NJ 07105

IN THE MATTER OF FILE A 206-803-700 DATE: Nov 5, 2015
BARBOSA SANTOS, LETICIA APARECIDA

__ 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 22041

__ 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
2009 W. JEFFERSON AVE, STE 300
HARLINGEN, TX 78550

__ OTHER: _____

_____
COURT CLERK
IMMIGRATION COURT FF

CC: ASSISTANT CHIEF COUNSEL
1717 ZOY ST.
HARLINGEN, TX, 785520000

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
HARLINGEN IMMIGRATION COURT
HARLINGEN, TEXAS

IN THE MATTER OF	)	November 5, 2015
	)	
BARBOSA SANTOS, LETICIA APARECIDA	)	Case Number: A 206-803-700
	)	
RESPONDENT	)	In Removal Proceedings

APPLICATIONS: Motion to Reopen

ON BEHALF OF THE RESPONDENT
Elisa C. Ambrosio-Farias, Esq.
Ambrosio & Associates
292 Lafayette Street, Second Floor
Newark, New Jersey 07105

ON BEHALF OF THE GOVERNMENT
Assistant Chief Counsel
U.S. Department of Homeland Security
1717 Zoy Street
Harlingen, TX 78552

ORDER OF THE IMMIGRATION JUDGE

On September 2, 2015, the Court ordered the respondent removed to Brazil *in absentia* pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act (INA or Act). The respondent, through counsel, filed a motion to reopen on October 9, 2015, arguing that her removal proceedings should be reopened because she did not receive proper notice of her September 2, 2015 removal hearing. The respondent's motion to reopen will be denied.

The Court concludes the respondent received proper notice of her September 2, 2015 removal hearing in accordance with section 239(a) of the Act. The record reflects that the Notice to Appear (NTA) was personally served upon the respondent on July 10, 2014. The NTA did not state a specific date and time of the respondent's next court appearance. *See Gomez-Palacios v. Holder*, 560 F.3d 354, 359 (5th Cir. 2009) (holding that a NTA is not statutorily deficient if it does not include the specific time and date of a removal hearing, as that information may be provided in a subsequent Notice of Hearing). Upon release from the custody of the Department of Homeland Security, the respondent reported her address as "34 A 6th Ave. Long Branch, New Jersey 07740." *See* Notice to EOIR: Alien Address (Form I-830). A Notice of Hearing (NOH) was mailed to the respondent at the exact address provided by the respondent in Form I-830 on July 27, 2006, informing the respondent of her September 2, 2015 removal hearing in Harlingen, Texas. The record of proceeding is devoid of evidence demonstrating that the notice sent by the Court to the respondent at 34 A 6th Ave. Long Branch, New Jersey 07740 was returned by the United States Postal Service as undeliverable. When the

respondent failed to appear at her September 2, 2015 removal hearing, the Court proceeded *in absentia* and ordered the respondent removed.

The respondent's motion to reopen asserts that she did not receive proper notice of her September 2, 2015 removal hearing. The only evidence that the respondent presented with her motion to reopen in order to attempt to rebut the presumption of delivery of the hearing notice is her statement, the statement of Marlon Ferreira (who the respondent claims to have resided with upon release) and the statement of Paulo Rocha, Esq. (the respondent's former counsel).

The Court finds that the respondent has not overcome the presumption of delivery attached to delivery by regular mail set forth in *Matter of M-R-A-*. The Court mailed a notice informing the respondent that her hearing had been scheduled. INA § 239(a)(2). This notice was addressed and mailed according to normal office procedures to the respondent's most recent address under section 239(a)(1)(F) of the Act. INA § 240(b)(5)(A). The respondent's statement indicates that she resided with her friend Marlon Ferreira until recently. Marlon Ferreira's statement indicates that he was living at 929 Van Court Avenue, Long Branch, New Jersey 07740. Neither statement explains the discrepancy in the address provided by the respondent upon her release and the address Marlon Ferreira has provided in his statement.

The Court concludes that the affidavits submitted by the respondent with her motion to reopen are insufficient to overcome the weaker presumption of delivery of the hearing notice for the respondent's September 2, 2015 removal hearing. The Court concludes that the respondent has not presented an affidavit, a declaration or any other evidentiary material that rebuts the weaker presumption of delivery of the hearing notice to the address she provided for her September 2, 2015 removal hearing. INA § 240(c)(7)(B); 8 C.F.R. § 1003.23(b)(3).

Furthermore, the burden is placed on the respondent to provide a full and complete address where she can receive mail INA § 239(a)(1)(F). If the respondent was not residing at the address she provided to the Court she failed to meet her burden. It is well settled that a removal order will not be set aside "if 'the alien's failure to receive actual notice was due to [her] neglect of [her] obligation to keep the immigration court apprised of [her] current mailing address.'" *Lopez–Dubon v. Holder*, 609 F.3d 642, 647 (5th Cir. 2010) (quoting *Gomez–Palacios v. Holder*, 560 F.3d 354, 360 (5th Cir. 2009)).

Accordingly, based upon all of the above, the Court concludes that the respondent has not demonstrated that she did not receive notice of her September 2, 2015 removal hearing in accordance with section 239(a)(2) of the Act. Therefore, the respondent's removal order should not be rescinded. INA § 240(b)(5)(C)(ii); 8 C.F.R. §1003.23(b)(4)(ii).

The respondent's motion also seeks reopening in order to allow the respondent to apply for asylum, withholding of removal, and protection under the Convention Against Torture. The Court finds that the respondent has not included the appropriate applications for relief and all supporting documentation. 8 C.F.R. § 1003.23(b)(3).

Finally, the Court concludes the circumstances of this case do not warrant the exercise of the Court's limited discretion to reopen sua sponte. *See Matter of J-J*, 21 I&N Dec. 976 (BIA 1997).

Accordingly, the following orders shall be entered:

ORDER: The respondent's motion to reopen is DENIED.

David Ayala
United States Immigration Judge

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ( ) ALIEN ( )ALIEN C/O CUSTODIAN (X) ALIEN'S ATTY/REP ( ) DHS
DATE: 11-5-15 BY: COURT STAFF EA
ATTACHMENTS: ( ) EOIR-33 ( ) EOIR-28 ( ) LEGAL SERVICES LIST ( ) OTHER

Appeal Forms