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 20530

garcia, alejandro
Law offices of Alejandro Garcia
6055 E. Washington Blvd., Suite 1045
Commerce, CA 90040

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

Name: CORDOVA-RAMIREZ, MAGDA E... **A 205-485-321**

Date of this notice: 6/12/2015

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:
Grant, Edward R.

Userteam: Docket

File: A205 485 321 – Los Angeles, CA Date: JUN 12 2015

In re: MAGDA ESPERANZA CORDOVA-RAMIREZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alejandro Garcia, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Guatemala, was ordered removed in absentia on July 9, 2014. On August 13, 2014, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on October 2, 2014. The respondent filed a timely appeal of that decision. The Department of Homeland Security (DHS) has not filed a reply to the appeal. The appeal will be sustained.

Upon de novo review, in light of the totality of circumstances presented in this case, including the respondent's affidavit indicating that while other Immigration Court notices were received, the NOH was not received at the address she provided and at which she continues to live, we will sustain the appeal and allow the respondent another opportunity to appear for a hearing. *See Salta v. INS*, 314 F.3d 1076 (9th Cir. 2002) (finding under the circumstances, a sworn affidavit from the alien that neither she nor a responsible party residing at her address received the notice was sufficient to rebut the presumption of delivery).

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.

Edward R. Grant
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1 CANAL PL-365 CANAL ST, 2450A
NEW ORLEANS, LA 70130

Law offices of Alejandro Garcia
garcia, alejandro
6055 E. Washington Blvd., Suite 1045
Commerce, CA 90040

IN THE MATTER OF FILE A 205-485-321 DATE: Oct 2, 2014
CORDOVA-RAMIREZ, MAGDA ESPERANZA

__ 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
1 CANAL PL-365 CANAL ST, 2450A
NEW ORLEANS, LA 70130

__ OTHER: _____

COURT CLERK
IMMIGRATION COURT FF

CC:

, ,

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

File Number: **A205 485 321**	)	
	)	
In the Matter of:	)	
	)	
CORDOVA-RAMIREZ,	)	**IN REMOVAL PROCEEDINGS**
Magda Esperanza,	)	
	)	
Respondent	)	

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) (2012) – *not in possession of a valid visa or entry document*

APPLICATION: Motion to Reopen

ON BEHALF OF RESPONDENT:
Alejandro Garcia, Esquire
6055 East Washington Boulevard, Suite 1045
Commerce, California 90040

ON BEHALF OF THE DEPARTMENT:
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

Magda Esperanza Cordova-Ramirez (Respondent) is a native and citizen of Guatemala. See Exh. 1. The Department of Homeland Security (Department) served Respondent with a Notice to Appear (NTA) via regular mail on August 15, 2012. The NTA alleged that Respondent was not a citizen or national of the United States and entered the United States near Laredo, Texas on or about June 15, 2012, without a valid visa or entry document. Exh. 1. Accordingly, the NTA charged her with inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I), as an alien not in possession of a valid visa or entry document at the time of application for admission. Id. Jurisdiction vested and removal proceedings commenced when the Department filed the NTA with the New Orleans, Louisiana Immigration Court on August 15, 2012. 8 C.F.R. § 1003.14(a) (2012).

Respondent was detained in Louisiana, during which time she retained counsel and completed a credible fear interview. The hearing officer found she had a credible fear of persecution or torture if removed to Guatemala, and the Department released her on bond. On August 27, 2012, she filed a Form EOIR-33, Alien's Change of Address Form, with the Court, which provided her new address in Arleta, California. Through counsel, Respondent filed a motion for change of venue on February 3, 2014, in which Respondent admitted all allegations

and conceded the charge of removability in the NTA. Respondent's counsel also filed a motion to withdraw contingent on a change of venue. The Court granted both motions on February 10, 2014, and Respondent's case was transferred from New Orleans to Los Angeles.

Respondent also filed a second Form EOIR-33 with the Court on February 3, 2014, changing her address to "7346 Kraft Ave., N. Hollywood, CA. 91605" (North Hollywood Address).

On June 20, 2014, the Court served Respondent with a Notice of Hearing (NOH), sent via regular mail to the North Hollywood address, informing Respondent that her next hearing was scheduled for July 9, 2014. Exh. 2. On July 9, 2014, Respondent failed to appear for her hearing. The Court, proceeding *in absentia*, found that removability had been established by clear, convincing and unequivocal evidence based on Respondent's prior admissions and concession contained in the motion for change of venue. Accordingly, the Court ordered Respondent removed to Guatemala.

On August 13, 2014, Respondent filed the pending motion to reopen on the basis of improper notice, alleging that she did not she did not receive the NOH informing her of her July 9, 2014 hearing. See Respondent's Motion to Reopen at 1-2 (Aug. 13, 2014).

For the following reasons, this Court will deny Respondent's motion to reopen.

II. Law and Analysis

The Court may rescind an *in absentia* removal order upon a motion to reopen if the alien demonstrates that she did not receive proper notice of the proceeding. INA § 240(b)(5)(C)(ii); see also 8 C.F.R. § 1003.23(b)(4)(ii). Written notice of a scheduled proceeding must be given to the alien in person or, if personal service is not practical, sent by mail to counsel of record or the alien at the most recent address provided to the Attorney General. See INA § 239(a)(1), (2); Matter of G-Y-R-, 23 I&N Dec. 181, 185 (BIA 2001).

Once the Department demonstrates that an NOH was sent by regular mail to an alien's most recent address, there is a presumption of effective service. Matter of M-R-A-, 24 I&N Dec. 665, 673 (BIA 2008). This is a weaker presumption than the Court applies to notice by certified mail; however, an alien must present sufficient evidence that she did not receive the notice in order to overcome this presumption. Sembiring v. Gonzales, 499 F.3d 981, 987 (9th Cir. 2007); Salta v. INS, 314 F.3d 1076, 1079 (9th Cir. 2002); M-R-A-, 24 I&N Dec. at 673.

In determining whether a respondent has rebutted the lesser presumption of delivery, a Court may consider: (1) the respondent's affidavit; (2) affidavits from family members or other individuals who are knowledgeable about the facts relevant to whether notice was received; (3) the respondent's actions upon learning of the *in absentia* order, and whether due diligence was exercised in seeking to redress the situation; (4) any prior affirmative application for relief, indicating that the respondent had an incentive to appear; (5) any prior application for relief filed with the Immigration Court or any prima facie evidence in the record or the respondent's motion of statutory eligibility for relief, indicating that the respondent had an incentive to appear; (6) the respondent's previous attendance at Immigration Court hearings, if applicable; and (7) any other

circumstances or evidence indicating possible nonreceipt of notice. M-R-A-, 24 I&N Dec. at 674. "Each case must be evaluated based on its own particular circumstances and evidence," and the Court is "neither required to deny reopening if exactly such evidence is not provided nor obliged to grant a motion, even if every type of evidence is submitted." Id.

The Court finds that Respondent received legally sufficient notice of her scheduled hearing. A respondent can be properly charged with receiving constructive notice, even if she did not personally see the mailed document. G-Y-R-, 23 I&N Dec. at 189. Respondent's most recent address of record is the address contained in the Form EOIR-33, filed February 3, 2014. The Court mailed the NOH on June 20, 2014, to this address. Exh. 2. Therefore, a presumption of delivery exists. See Sembiring, 499 F.3d at 983; Salta, 314 F.3d at 1079.

Respondent has not submitted sufficient evidence to overcome the presumption of delivery. See Sembiring, 499 F.3d at 987-88; M-R-A-, 24 I&N Dec. at 674. In support of her claim, Respondent submitted a copy of her credible fear interview, as well as an affidavit in which she states that she consulted with an immigration attorney on July 23, 2014, and only then learned about the July 9, 2014 hearing and her *in absentia* removal order. See Respondent's Mot. to Reopen, Tabs A and B. She also states in her affidavit that she has previously complied will all immigration court orders, including the requirement to update her address. See Respondent's Motion to Reopen, Tab B. The Court notes that Respondent acted diligently by filing this motion to reopen within a month of learning of the *in absentia* order. Id. However, Respondent has not presented evidence that indicates nonreceipt of the NOH due to mail delivery issues or any other reason. The Court further notes that the NOH was not returned as undeliverable. Finally, although Respondent has submitted her credible fear interview, a finding that an applicant has a credible fear does not establish prima facie eligibility for asylum. See INA § 235(b)(1)(B)(v).

In weighing both the positive and negative factors presented, the Court finds that Respondent has failed to rebut the lesser presumption of delivery and has failed to demonstrate that she did not receive proper notice of her July 9, 2014 hearing. As the Court finds that Respondent received legally sufficient notice of her hearing, it declines to reopen her case on this basis.

Accordingly, the following order shall be entered:

ORDER

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

DATE: Oct 2, 2014

Anna Ho
Immigration Judge