U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: RAMOS-MORENO, RICKY ROLA... **A 078-323-842**

Date of this notice: 9/17/2018

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:
Kelly, Edward F.
Adkins-Blanch, Charles K.
Mann, Ana

Userteam: Docket

File: A078 323 842 – Atlanta, GA Date: SEP 17 2018

In re: Ricky Rolando RAMOS-MORENO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Helen L. Tarokic, Esquire

ON BEHALF OF DHS: Gregory E. Radics
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Honduras, appeals from the decision of the Immigration Judge, dated November 21, 2017, denying his motion to reopen and rescind the in absentia removal order issued on April 3, 2002. The appeal will be sustained and the record will be remanded for further proceedings consistent with this decision.

We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii).

On appeal, the respondent argues, as he did before the Immigration Judge, that he did not receive notice of his April 3, 2002, hearing. The respondent argues that in determining that he did not overcome the presumption of delivery of the notice of hearing, the Immigration Judge did not consider all the relevant evidence. *See Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). For example, he asserts that the Immigration Judge did not consider the affidavits provided by him, his mother and his step-father; that in analyzing the photos of the mailboxes the Immigration Judge did not notice that two mailboxes were numbered 3; and, that the Immigration Judge did not consider that he was an unaccompanied child when he entered the United States and was issued a Notice to Appear.

We find the Immigration Judge erred when he said that "[W]ithout evidence to the contrary, the Court is left to conclude that the respondent . . . was in receipt of the Notice of Hearing" (IJ at 3). *See* Respondent's Br. at 7. There is evidence to the contrary. According to the affidavits provided by the respondent, his mother and his step-father, the respondent did not receive the notice of hearing. They all attested to checking the mailbox regularly and that they never received a notice of hearing. They all attested to the fact that there were significant problems receiving mail at their mailbox. *See* Respondent's Motion to Reopen, Tabs A-C. Also, the respondent entered at the age of 16 as an unaccompanied child, and when he united with his mother, the notice of hearing was to be sent to her address. The respondent is now an adult. Accordingly we will sustain the appeal and remand for further proceedings.

Additionally, we acknowledge that the respondent filed a supplemental brief arguing that his Notice to Appear (NTA) was defective for purposes of placing the respondent in proceedings, given the Supreme Court's recent ruling in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). We

disagree. We recently held that an NTA that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and satisfies the requirements of section 239(a) of the Immigration and Nationality Act, 8 U.S.C. 1229(a), provided a notice of hearing specifying this information is later sent to the alien. *See Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018).

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD