



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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**DHS/ICE Office of Chief Counsel - MIA
333 South Miami Ave., Suite 200
Miami, FL 33130**

Name: HOLTZMAN, JULIA CATHERINE

A 072-043-863

Date of this notice: 9/30/2013

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:
Cole, Patricia A.
Greer, Anne J.
Pauley, Roger

lucasd
User team: Docket

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Falls Church, Virginia 22041

File: A072 043 863 – Miami, FL

Date:

SEP 30 2013

In re: JULIA CATHERINE HOLTZMAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rudolph Baboun, Esquire

ON BEHALF OF DHS: Thomas M. Ayze
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation (found)

APPLICATION: Reopening

The respondent appeals from the Immigration Judge's August 14, 2012, decision denying her August 13, 2012, motion to reopen removal proceedings conducted *in absentia* on March 15, 2012. Her appeal will be sustained, and the record will be remanded to the Immigration Court for further proceedings consistent with this decision.

Section 240(b)(5)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1229a(b)(5)(A) provides that:

[a]ny alien who, after written notice required under paragraph (1) or (2) of section 239(a) [8 U.S.C. § 1229(a)] has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in subsection (e)(2)). The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F).

In *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2010), the Board defined the meaning of the language "at the most recent address provided under section 239(a)(1)(F)," within the context of section 240(b)(5)(A) of the Act. *See also Matter of Anyelo*, 25 I&N Dec. 337 (BIA 2010) (distinguishing *Dominguez v. United States Attorney General*, 284 F.3d 1258 (11th Cir. 2002), from *Matter of G-Y-R-*, *supra*, and reaffirming the applicability of our precedent within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit where this case arises). The Board held that an address does not become a section 239(a)(1)(F) address unless the alien receives or can be charged with receiving the warnings and advisals contained in the Notice to

Appear (NTA). *See Matter of G-Y-R-, supra*. Accordingly, an address can be a section 239(a)(1)(F) address only if the alien has been informed of the particular statutory address obligations associated with removal proceedings and consequences of failing to provide a current address. *See Matter of G-Y-R-, supra*. In the absence of such, an alien may not be ordered removed from the United States *in absentia*. *See id.*

The record reveals that both the NTA and the Notice of Hearing (NOH) were sent to the respondent by regular mail at the address she provided to the Department of Homeland Security (DHS), formerly the Immigration and Naturalization Service, while pursuing her application for adjustment of status, which was granted in 1993 (Exhs. 1-2, 4). The respondent claims that she never received the NTA or the NOH (Resp. Motion to Reopen at 2; Resp. Brief at 1-2).¹ Specifically, she contends that the address used by the DHS was the last address she provided to the agency but that the residence was foreclosed upon in 2011 and she moved to a new address prior to the October 12, 2011, service of the NTA (Resp. Motion to Reopen at 2, Tab D; Resp. Brief at 2).² As a result, she claims that she did not discover that she was ordered removed *in absentia* until she was apprehended by immigration officials in July 2012 (Resp. Motion to Reopen at 2; Resp. Brief at 2; Resp. July 23, 2012, Change of Address Form (Form E-33)).³ Upon discovering the outstanding order of removal, the respondent retained counsel who filed the instant motion to reopen (Resp. Motion to Reopen).

Contrary to the DHS's assertion on appeal that the respondent's claim of deficient notice is uncorroborated, we note that the motion is supported by various documents confirming the foreclosure and a move to an apartment during the relevant time period (DHS Brief at 4; Resp. Motion to Reopen at Tabs A-B, D). Moreover, notwithstanding the DHS's assertion that none of the notices was returned as undeliverable, the record of proceedings contains the returned NOH sent to the same address as the NTA bearing the designation "Return to Sender: Not at This Address," along with a yellow sticker affixed to the envelope by the United States Postal Service indicating "Return to Sender, Attempted—Not Known, Unable to Forward" (DHS Brief at 4; Exh. 4).

At issue is whether the respondent was properly notified of the initiation of proceedings. We conclude that the DHS did not send the NTA to the respondent at a section 239(a)(1)(F) address. Although the NTA was sent to the respondent's purported last known address, the record does not contain any persuasive indication that she was actually notified or could be charged with

¹ The respondent filed a brief with her Notice of Appeal (NOA) and then subsequently filed an additional brief on September 18, 2012, and a response to the DHS brief on October 25, 2012. All references to "Resp. Brief" refer to the filing submitted with the respondent's NOA unless otherwise indicated in this decision.

² The respondent maintains that the last address she provided to the DHS was 2701 N. 34th Avenue, 31B, Hollywood, FL, 33021, but that she moved to 4300 Sheridan Street, #140, Hollywood, FL, 33021, prior to the issuance of the NTA (Resp. Motion to Reopen at 1-2, Tabs A-B, D; Resp. Brief at 2).

³ The record contains evidence that the *in absentia* decision was re-served to the respondent at her Sheridan Street address on July 26, 2012.

having been notified of the particular statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. *See Matter of G-Y-R-, supra*. In the absence of such, it was inappropriate to order her removal from the United States *in absentia*. *See id*; *see also Matter of Anyelo, supra*, at 338.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The *in absentia* order is rescinded, proceedings are reopened in this matter, and the record is remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
333 S. MIAMI AVE. 7TH FLOOR
MIAMI, FL. 33130

IN THE MATTER OF:
HOLTZMAN, JULIA CATHERINE

CASE NO.072-043-863

RESPONDENT/APPLICANT)

IN DEPORTATION/EXCLUSION/REMOVAL PROCEEDINGS) **DECISION ON A MOTION
TO REOPEN**

**HAS BEEN FILED IN THE ABOVE CAPTIONED CASE. THE MOTION HAS BEEN
DULY CONSIDERED AND IT APPEARS TO THE COURT THAT:**

- ☐ THE REQUEST IS TIMELY AND REASONABLE. THEREFORE, IT IS HEREBY
ORDERED THAT THE MOTION BE GRANTED.
- ☒ THE MOTION HAS BEEN DULY CONSIDERED AND IT APPEARS TO THE COURT
THAT NO SUBSTANTIAL GROUNDS HAVE BEEN ADVANCED TO WARRANT ITS
GRANT. THEREFORE, IT IS HEREBY ORDERED THAT THE MOTION BE AND THE
SAME IS HEREBY DENIED.

☐ _____

RENE D. MATEO
IMMIGRATION JUDGE
DATE SIGNED: 8/14/2012

CC: CHIEF COUNSEL
COUNSEL FOR RESPONDENT/APPLICANT
RESPONDENT/APPLICANT

CERTIFICATE OF SERVICE

This document was served by: Mail:(M) Personal Service:(P)
To: Alien[] Alien c/o Custodial Officer[] Alien's Att./Rep.[] DHS[]
Date: _____ Court Staff By: _____

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
333 SOUTH MIAMI AVE., STE. 700
MIAMI, FL 33130

In the Matter of:
HOLTZMAN, JULIA CATHERINE

Case No.: A072-043-863

Docket: MIAMI, FLORIDA

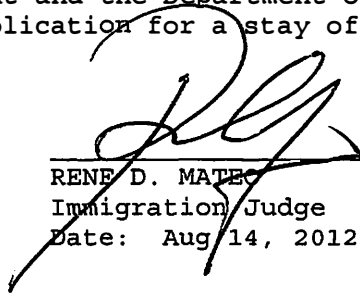
RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

The respondent/applicant has applied for a stay of REMOVAL in connection with a Motion to Reopen.

Upon consideration of the representations and submissions made by and on behalf of the respondent/applicant and the Department of Homeland Security, it is HEREBY ORDERED that the application for a stay of REMOVAL N DENIED


RENE D. MATEO
Immigration Judge
Date: Aug 14, 2012

Appeal: NO APPEAL (A/I/B)
Appeal Due By: ~~Apr 16, 2012~~

9/14/2012

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL ☒ (M) PERSONAL SERVICE (P)
TO: ☒ ALIEN ☐ ALIEN c/o Custodial Officer ☐ Alien's ATT/REP ☒ DHS
DATE: AUG. 14, 12 BY: COURT STAFF
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

Form EOIR 5 - OT (Stay of REMOVAL)