



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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Akrofi & Akrofi, PC
3325 Wilshire Blvd
Suite 1235
Los Angeles, CA 90010**

**DHS/ICE Office of Chief Counsel - SND
880 Front St., Room 2246
San Diego, CA 92101-8834**

Name: JONES, JENINE TAMEKA

A 026-501-154

Date of this notice: 9/21/2015

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.
O'Leary, Brian M.
Guendelsberger, John

Userteam: Docket

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Handwritten initials

Falls Church, Virginia 22041

File: A026 501 154 – San Diego, CA

Date: SEP 21 2015

In re: JENINE TAMEKA JONES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Nana Boachie-Yiadom, Esquire

APPLICATION: Reopening


In a decision dated October 28, 2014, an Immigration Judge denied the respondent's motion to reopen removal proceedings, which had been conducted in absentia under section 240(b)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(A). The respondent filed a timely appeal from that decision. The Department of Homeland Security (DHS) has not filed a reply to the appeal. The appeal will be sustained.

The respondent was personally served with a Notice to Appear (NTA), and a notice of hearing (NOH) was mailed on March 21, 2012, to the respondent at her correct address (I.J. at 1; Exhs. 1, 3). However, the respondent failed to appear at her November 13, 2012, hearing, and an in absentia order was entered against her.

On September 8, 2014,¹ the respondent filed a motion to reopen, alleging that she did not receive notice of her hearing, and also seeking cancellation of removal, withholding of removal, and protection under the Convention Against Torture (CAT). The Immigration Judge denied the motion to reopen on October 28, 2014, finding that notice was adequate and further finding that the respondent had failed to rebut the presumption of delivery of the NOH.

Upon de novo review, in light of the totality of circumstances presented in this case, including the fact that the respondent provided her affidavit and third-party affidavits with the motion to reopen, we will sustain the appeal and allow the respondent another opportunity to appear for a hearing. *See Arrieta v. INS*, 117 F.3d 429, 432 (9th Cir. 1997) (letter by petitioner is substantial and probative evidence that may rebut presumption of effective service).

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.


FOR THE BOARD

¹ The respondent's previous filings, on July 15, 2014, July 29, 2014, and August 12, 2014, were rejected by the Immigration Court for various defects.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
401 WEST A STREET, SUITE #800
SAN DIEGO, CA 92101

Law offices of Keith R. Campbell
Campbell, Keith Raymond
400 Corporate Pointe, Suite #300
Culver City, CA 90230

Date: Oct 28, 2014

File A026-501-154

In the Matter of:
JONES, JENINE TAMEKA

X Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before 11-28-14. The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.

____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

X Enclosed is a copy of the order ⁵ decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,



Immigration Court Clerk

UL

cc: ISHIMOTO, RHANA, ASSISTANT CHIEF COUNSEL
880 FRONT STREET, STE. 2246
SAN DIEGO, CA 92101

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

In the Matter of: JENINE TAMEKA JONES

A026-501-154

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the "MOTION TO REOPEN", 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: *See attached Q.*

Deadlines:

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

Date: 10-28-14


Immigration Judge

Certificate of Service

This document was served by: ☒ Mail ☒ Personal Service

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Date: 10-28-14

By: Court Staff 

026-501-154

Jenine Tameka Jones

The Court may rescind an *in absentia* order of removal upon a motion to reopen filed within 180 days after the date of the order of removal if the alien can demonstrate his failure to appear was due to exceptional circumstances. INA § 240(b)(5)(C)(i); 8 C.F.R. § 1003.23(b)(4)(ii). Alternatively, the Court may rescind an *in absentia* order of removal upon a motion to reopen filed at any time if the alien demonstrates that notice was improper. INA § 240(b)(5)(C)(ii); 8 C.F.R. § 1003.23(b)(4)(ii).

The respondent's claim of lack of notice is without merit. The Court is required to notice the respondent at the address provided by the respondent. The respondent was clearly aware of having been placed into removal proceedings on the charge of alien smuggling as she was personally served with the Notice to Appear. The respondent address on the Notice to Appear matches the address on the Form I-213 given by the respondent, and the respondent admits that this was her correct address. The record reflects that the Notice of Hearing was properly mailed to the address given by the respondent and which she admits was her address. Neither the Notice of Hearing nor the subsequent Order of removal in absentia was returned to the Court as undelivered. The respondent's argument in the motion offered by counsel with respect to the hearing notice that, "[e]ven if it was mailed it was not addressed properly" is apparently made without having reviewed the record and is clearly not supported by the record. The Court agrees with the DHS opposition that the respondent's affidavit claiming no notice is insufficient under these circumstances, and that "it is unclear why, if the respondent was having trouble receiving mail from 2011 to 2014, she did not contact the Court as to the status of her removal proceedings."

Furthermore, the Court notes that this is not a case in which it would exercise its limited *sua sponte* authority to reopen the proceedings on its own. *See* 8 C.F.R. § 1003.23(b)(1). The Court invokes *sua sponte* authority sparingly, treating it not as a general remedy for hardships created by application of the statutory and regulatory scheme, but as an extraordinary remedy reserved for truly exceptional situations. *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Based on the evidence presently before it, the Court must conclude that the respondent's situation is not among this class of cases.

Accordingly, the respondent's motion to reopen is denied.

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

In the Matter of: JENINE TAMEKA JONES

A026-501-154

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the "EMERGENCY MOTION TO STAY REMOVAL", 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: *As Mot.*

Deadlines:

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

Date: 10-28-14


Immigration Judge

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