



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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Nexus Caridades
113 Mill Place Parkway
Suite 103
Verona, VA 24482**

**DHS/ICE Office of Chief Counsel - CHL
5701 Executive Ctr Dr., Ste 300
Charlotte, NC 28212**

Name: APARICIO SANCHEZ, ARMANDO

A 206-132-700

Date of this notice: 11/15/2016

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:
O'Connor, Blair
Mann, Ana
Grant, Edward R.

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Userteam: Docket

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Falls Church, Virginia 22041

File: A206 132 700 – Charlotte, NC

Date:

NOV 15 2016

In re: ARMANDO APARICIO SANCHEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brandon D. Pierce, Esquire

ON BEHALF OF DHS: Hilary Rainone
Assistant Chief Counsel

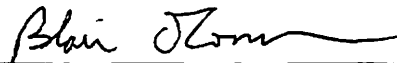
APPLICATION: Reopening

In a decision dated February 10, 2016, an Immigration Judge denied the respondent's motion to reopen his December 15, 2015, 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 filed an opposition to the appeal. The appeal will be sustained.

Upon de novo review, and while we acknowledge the Immigration Judge's sound reasoning in his decision, we conclude that it is appropriate to allow the respondent another opportunity to appear for a hearing. We consider the totality of circumstances presented in this case, including the fact that the notice of hearing was returned by the postal service, the respondent's evidence that the bond company made a mistake in reporting the respondent's address, and the respondent's diligence in seeking reopening.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained and the record is remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
5701 EXECUTIVE CENTER DR. #400
CHARLOTTE, NC 28212

Nexus Caridades
Pierce, Brandon Darrell
113 Mill Place Parkway
Suite 103
Verona, VA 24482

IN THE MATTER OF
APARICIO SANCHEZ, ARMANDO

FILE A 206-132-700

DATE: Feb 10, 2016

___ 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
5701 EXECUTIVE CENTER DR. #400
CHARLOTTE, NC 28212

OTHER: IS Order + Written Appeal

PP
COURT CLERK
IMMIGRATION COURT

CC: SCOTT CRISS, ESQ
5701 EXECUTIVE CENTER DR, 300
CHARLOTTE, NC, 28212

FF

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
5701 Executive Center Drive, Suite 400
Charlotte, North Carolina 28212

IN THE MATTER OF: ARMANDO APARICIO SANCHEZ
CASE NO. A 206-132-700

ALIEN ATTORNEY: BRANDON D. PIERCE, ESQ

DECISION ON A MOTION.

IN

☐ DEPORTATION ☐ EXCLUSION ☒ REMOVAL PROCEEDINGS ☐ AOC ASYLUM ONLY

A **MOTION TO RE-OPEN** 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. *See Attached*

☐ Adjourn to individual / master calendar hearing on _____ at _____ am/pm.

Dated this *10th* day of *FEB*, 2016

[Signature]

BARRY J. PETTINATO
U.S. Immigration Judge

This document was served to:

- ☒ District Counsel
☒ Counsel for Respondent / Applicant
☐ Respondent / Applicant

Mailed out: 2.10.16 By: *[Signature]*

Upon release from custody, respondent provided the following address: 828 Bend Creek Drive, Wilmington, North Carolina, 28405. *See* Notice to EOIR: Alien Address, Form I-830. On January 14, 2015, venue was changed from Lumpkin, GA to Charlotte, NC noting the respondent's address as that listed in Form I-830. Thereafter, on three occasions, March 5, 2015, July 14, 2015, and October 15, 2015, the Court sent respondent notice of his hearing date. The hearing notices were returned to the Court on each occasion as being an insufficient address or not deliverable as addressed. The last hearing notice scheduled respondent's hearing for December 15, 2015. Respondent failed to appear and was ordered removed *in absentia*.

In respondent's motion to reopen he asserts the failure to provide EOIR with a complete address (including his apartment number) was the fault of either the bond company or his family for providing the bond company an incomplete address. Respondent contends he did not provide the incomplete address to EOIR and thus the error on the Form I-830 cannot be held against him. The Court disagrees. Respondent's family and the bond company were responsible for providing respondent's full and complete address. They failed in their obligation to do so.

The hearing notice was sent to the most recent address provided under INA § 239(a)(1)(F). *See* INA §§ 240(b)(5), 239(a)(2); 8 C.F.R. § 1003.23(b)(4)(ii). As such, notice was proper at the last known address of record. Accordingly, respondent has failed to establish that he did not receive notice in accordance with paragraph (2) of INA § 239(a). His motion to reopen is therefore **DENIED**.