U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: M[redacted] A[redacted], L[redacted] **A [redacted]-043**
Riders:[redacted]

Date of this notice: 8/28/2018

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:
Snow, Thomas G
Mann, Ana
Kelly, Edward F.

Userteam: Docket

Files: A[redacted]-043 – Houston, TX
A[redacted]

Date: AUG 28 2018

In re: L[redacted] E[redacted] M[redacted] A[redacted]
[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Eileen Blessinger, Esquire

APPLICATION: Reopening

The respondents, natives and citizens of Honduras, appeal the decision of the Immigration Judge, dated December 26, 2017, denying their motion to reopen. The Department of Homeland Security has not responded to the appeal.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

Considering the totality of the circumstances presented in this case, we conclude that reopening is warranted as the lead respondent has demonstrated that she did not receive notice of her removal hearing in accordance with section 240(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(2). Section 240(b)(5)(C)(ii) of the Act, 8 U.S.C. § 1229a(b)(5)(C)(ii). Her Notice of Hearing in Removal Proceedings was not mailed "to the last address provided by the alien" as required by section 240(c) of the Act. Upon their apprehension by immigration officers, the lead respondent reported that she was intending to reside on "Fallbrook Drive" in Houston, Texas (Exhs. 1, 2). However, due to a scrivener's error, the notice was inadvertently sent to "Fallsbrook Drive" (Exh. 3). As such, we agree with her argument that her removal proceedings should be reopened on account of lack of notice.

With respect to the rider respondent, her notice was properly addressed. Nonetheless, considering the totality of the circumstances, including her young age, we agree with her argument that these proceedings should otherwise be reopened so that she can be afforded a renewed opportunity to appear before an Immigration Judge to show why she should not be removed from the United States. 8 C.F.R. § 1003.23(b)(1).

Finally, we agree with the respondents that the venue of these removal proceedings should be changed to the Immigration Court in Arlington, Virginia. 8 C.F.R. § 1003.20. However, as the lead respondent is currently detained in Williamsburg, Virginia, removal proceedings may be completed through video conference pursuant to section 240(b)(2)(A) of the Act.

At the present time, we express no opinion regarding the ultimate outcome of these proceedings. Accordingly, the following order is entered.

ORDER: The respondents' appeal is sustained, the orders of removal, entered in absentia on September 2, 2014, are vacated, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings and the entry of a new decision.

FURTHER ORDER: Venue is changed to the Immigration Court in Arlington, Virginia.

FOR THE BOARD