U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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DHS/ICE Office of Chief Counsel - BUF
130 Delaware Avenue, Room 203
Buffalo, NY 14202

Name: PEREZ-CABRERA, MARIA **A072-365-767**

Date of this notice: 3/15/2012

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.
Wendtland, Linda S.

File: A072 365 767 - Buffalo, NY

Date: MAR 15 2012

In re: MARIA PEREZ-CABRERA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eugenia Ruiz-Uribe, Esquire

ON BEHALF OF DHS: Fauzia S. Khan
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Reopening

The respondent, a native and citizen of the Dominican Republic, appeals from the Immigration Judge's September 3, 2009, decision denying her "Motion to Reopen Removal Proceedings." The respondent had been previously ordered removed *in absentia* for her failure to appear for a hearing on April 11, 2003. The record will be remanded.

On appeal, the respondent argues that the Immigration Judge erred in denying her motion to reopen. Specifically, the respondent contends that she never received the notices for her rescheduled hearing. In support of this contention, the respondent submitted a personal affidavit attesting to the fact that she did not receive the notices.

In the interests of justice, we find it necessary to reverse the Immigration Judge's denial of the respondent's motion to reopen. The record reveals that the respondent has been in the United States since 1989 and that she has a United States citizen husband and two United States citizen children. Although the respondent failed to appear for her April 11, 2003, hearing, she had appeared for her initial two hearings. Moreover, we find that the respondent had the incentive to appear for her rescheduled hearings given her potential eligibility for relief. Indeed, the respondent submitted an application for relief with her motion to reopen. Further, we note that the presumption of proper service is weaker in this case given the fact that the respondent's notices were sent via regular rather than certified mail. *See Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008) (holding that where a Notice to Appear or Notice of Hearing is properly addressed and sent by regular mail according to normal office procedures, there is a presumption of delivery, but it is weaker than the presumption that applies to documents sent by certified mail); *Matter of C-R-C-*, 24 I&N Dec. 677 (BIA 2008) (holding that the respondent overcame the presumption of delivery by submitting an affidavit as well as circumstantial evidence); *see also Lopes v. Mukasey*, 517 F.3d 156 (2d Cir. 2008). Based on the

respondent's substantial equities, we find that remand of proceedings is warranted for the respondent to be given another opportunity to appear for a hearing.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The proceedings are reopened.

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

FOR THE BOARD