



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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26 Federal Plaza, 11th Floor  
New York, NY 10278**

**Name: CARMELA FLORES, MARIA**

**A 205-136-055**

**Date of this notice: 6/19/2014**

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:  
Adkins-Blanch, Charles K.  
Manuel, Elise  
Guendelsberger, John

schwarzA  
User team: Docket

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Falls Church, Virginia 20530

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File: A205 136 055 – New York, NY

Date: JUN 19 2014

In re: MARIA CARMELA FLORES a.k.a. Maria Carmela Arias Flores

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pasquale F. Giannetta, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed in absentia on October 19, 2012. On November 20, 2012, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on January 11, 2013. The respondent filed a timely appeal of that decision. The appeal will be sustained, proceedings will be reopened and the record will be remanded.

The Immigration Judge denied the respondent's motion to reopen finding that she failed to establish exceptional circumstances for her failure to appear at the hearing. However, upon review, we find that the totality of circumstances presented in this case constitute exceptional circumstances for the respondent's failure to appear at her hearing. Section 240(e)(1) of the Act; 8 U.S.C. § 1229(e)(1). The respondent's failure to appear was inadvertent and the result of a good faith mistake arising from the loss of her hearing notice during a move and misinformation from her counsel's office rather than an attempt to avoid a hearing. *See, e.g., Singh v. INS*, 295 F.3d 1037 (9<sup>th</sup> Cir. 2002) (the Court found exceptional circumstances were present where the alien misunderstood the hearing time and could have presented a valid claim for relief from deportation). Accordingly, we will allow the respondent another opportunity to appear for a hearing.

ORDER: The appeal is sustained, the in absentia order is rescinded, the proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.



FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
26 FEDERAL PLZ 12TH FL., RM1237  
NEW YORK, NY 10278

In the Matter of:  
CARMELA FLORES, MARIA  
  
RESPONDENT

Case No.: A205-136-055  
  
Docket: NEW YORK CITY, NEW YORK  
  
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of RESPONDENT

- ( ) Motion to Reconsider an Immigration Judge's decision  
(~~X~~) Motion to Reopen proceedings  
filed in the above entitled matter, it is hereby ordered that the motion  
( ) Be Granted  
(~~X~~) Be Denied for reasons indicated in the attached decision

*Alice Segal*  
ALICE SEGAL  
Immigration Judge  
Date: ~~12/31/12~~  
1/11/13 ASL

Appeal: NO APPEAL (A/I/B)  
Appeal Due By:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL ☒ PERSONAL SERVICE (P)  
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] Alien's ATT/REP ☒ DHS  
DATE: 1/14/13 BY: COURT STAFF [Signature]  
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

CARMELA-FLORES, Maria (A205-136-055)

On November 20, 2012, the respondent, through counsel, filed a motion to reopen the above-captioned proceedings wherein she was ordered removed *in absentia* on October 19, 2012. In support of the motion, the respondent's attorney alleges that the respondent missed the October 19, 2012 hearing because she misplaced her hearing notice "because she moved to another address." Furthermore, she called her attorney's office to inquire about the date of her upcoming hearing, and a member of the attorney's staff incorrectly informed the respondent that her next hearing date was October 29, 2012. When the respondent realized that her hearing was scheduled for October 19, 2012, and not October 29, 2012, "it was too late." The Court notes that the motion to reopen only contains an affirmation by the respondent's attorney, and does not include the respondent's affidavit, nor does it include an affidavit from the member of the attorney's staff who incorrectly informed the respondent that her hearing was scheduled for October 29, 2012. Attorney affirmations are not evidence. However, for purposes of adjudicating this motion the Court will treat the attorney affirmations in the current motion as evidence.

An order entered *in absentia* in removal proceedings may be rescinded only (i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that his failure to appear was because of exceptional circumstances, or (ii) upon a motion to reopen filed at any time if he demonstrates that he did not receive due notice or that he was in federal or state custody and his failure to appear was through no fault of his own. 8 C.F.R. § 1003.23(b)(4)(ii). The failure to appear because of "exceptional circumstances" refers to circumstances beyond the control of the alien, such as battery or extreme cruelty to the alien or to the alien's parent or child, serious illness of the alien, and serious illness or death of an immediate relative, but not including less compelling circumstances. INA § 240(e)(1).

The record reflects that on March 30, 2012 the respondent was personally notified of her October 19, 2012 hearing date. Specifically, a recording of the respondent's March 30, 2012 hearing establishes that, on this date, the respondent was advised, through a Spanish interpreter, that October 19, 2012 is her next hearing date. Moreover, on March 30, 2012 a hearing notice containing the October 19, 2012 hearing date was handed to the respondent by the undersigned Immigration Judge. See Exh. 6. Accordingly, the Court concludes that the respondent had proper notice of her October 19, 2012 hearing date. Furthermore, the Court cannot find that the events described in the motion to reopen amount to "exceptional circumstances." The fact that the respondent forget that she had a hearing on October 19, 2012 is not exceptional circumstance. Forgetting about one's hearing date after being personally notified of the hearing date is not a compelling circumstance akin to the death of an immediate family member or serious illness of the respondent. Likewise, the fact that someone in the attorney's office gave the respondent a wrong hearing date after she was properly notified of the correct hearing date by the Court is not a compelling circumstance that rises to the level of an "exceptional circumstance" as contemplated by the Act in INA § INA § 240(e)(1).