



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**MITCHELL, JASON
136 S VIRGIL AVE APT 224
LOS ANGELES, CA 90004**

**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: MITCHELL, JASON

A 205-908-063

Date of this notice: 2/14/2017

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.
Mann, Ana
Guendelsberger, John

Userteam: Docket

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Falls Church, Virginia 22041

File: A205 908 063 – Los Angeles, CA

Date:

FEB 14 2017

In re: JASON MITCHELL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The respondent, a native and citizen of Jamaica, appeals from an Immigration Judge's decision dated July 18, 2016, denying the respondent's motion to reopen his removal proceedings, which had been conducted in absentia. The appeal will be sustained.

We have considered the totality of the circumstances presented in this case, and conclude that an exceptional situation has been demonstrated and sua sponte reopening is warranted. *See* 8 C.F.R. § 1003.23(b)(1); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). The respondent arrived at the Immigration Court late. *See Perez v. Mukasey*, 516 F.3d 770 (9th Cir. 2008) (finding that an alien who arrives two hours late but while the Immigration Judge is still in the courtroom, did not fail to appear for his hearing). Prior to this hearing, the respondent had appeared in court to plead to the allegations contained in the Notice to Appear, and he filed his motion to reopen immediately. The respondent has three United States citizen children. *See* Affidavit for Waiver of Fee. Given the foregoing, we will sustain the appeal, proceedings will be reopened, and the record will be remanded to allow the respondent an opportunity to seek relief from removal.

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

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
606 SOUTH OLIVE ST.
LOS ANGELES, CA 90014

MITCHELL, JASON
136 S VIRGIL AVE APT 224
LOS ANGELES, CA 90004

IN THE MATTER OF
MITCHELL, JASON

FILE A 205-908-063

DATE: Jul 19, 2016

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

~~X~~ 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
606 SOUTH OLIVE ST.
LOS ANGELES, CA 90014

~~X~~ OTHER: see attached order dated 7/18/16

A. CHU
COURT CLERK
IMMIGRATION COURT

FF

CC: JESSICA TOPP, ESQ.
606 S. OLIVE ST., 8TH FLOOR
LOS ANGELES, CA, 90014

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA**

File Number: **A 205 908 063**

In the Matter of:

MITCHELL, Jason,

Respondent

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IN REMOVAL PROCEEDINGS

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act (INA) (2013)
– *remained in the United States for a time longer than permitted after admission*

APPLICATION: Motion to Reopen

ON BEHALF OF RESPONDENT:

Pro se

136 South Virgil Avenue

Apartment #224

Los Angeles, California 90004

ON BEHALF OF THE DEPARTMENT:

Jessica Topp, Assistant Chief Counsel

U.S. Department of Homeland Security

606 South Olive Street, Eighth Floor

Los Angeles, California 90014

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

Jason Mitchell (Respondent) is a native and citizen of Jamaica. Form I-862, Notice to Appear (NTA). On May 24, 2013, the U.S. Department of Homeland Security (the Department) personally served Respondent with a Notice to Appear (NTA). Id. In the NTA, the Department alleged that Respondent arrived in the United States at Miami, Florida, on or about May 19, 2002, as a nonimmigrant B-2 visitor with authorization to remain in the United States until November 18, 2002. Id. The Department further alleged that Respondent remained in the United States without authorization beyond November 18, 2002. Id. Accordingly, the Department charged Respondent with removability pursuant to INA § 237(a)(1)(B). Id. Jurisdiction vested and removal proceedings commenced when the Department filed the NTA with the Court on May 31, 2013. See 8 C.F.R. § 1003.14(a) (2013).

During a hearing on March 17, 2016, Respondent admitted the factual allegations in the NTA. See id. As such, the Court sustained the charge removability and found Respondent removable pursuant to INA § 237(a)(1)(B). During this hearing, the Court personally served Respondent with a Notice of Hearing, which informed him of his next hearing date: June 1, 2016. On June 1, 2016, Respondent failed to appear for his scheduled hearing. Proceeding *in*

absentia, the Court found that removability had been established by clear, convincing, and unequivocal evidence. Accordingly, the Court ordered Respondent removed to Jamaica.

On June 7, 2016, Respondent filed the pending motion to reopen, claiming that he did not attend his hearing on June 1, 2016, because his car did not start and he was forced to take public transportation, causing him to arrive to the Court late. For the following reasons, the Court will deny Respondent's motion to reopen.

II. Law and Analysis

A. Exceptional Circumstances

The Court may rescind an *in absentia* order of removal upon a motion filed within 180 days of the date of the order if the respondent demonstrates that he failed to appear because of exceptional circumstances beyond his control. 8 C.F.R. § 1003.23(b)(4)(ii). Exceptional circumstances include the serious illness of the respondent or the serious illness or death of the respondent's spouse, child, or parent. INA § 240(e)(1). Exceptional circumstances do not include less compelling circumstances. *Id.* The respondent bears the burden of supporting the motion with specific, detailed evidence to corroborate the claim of exceptional circumstances. Celis-Castellano v. Ashcroft, 298 F.3d 888, 890 (9th Cir. 2002); Matter of Beckford, 22 I&N Dec. 1216, 1218 (BIA 2000) (citing Matter of J-J-, 21 I&N Dec. 976, 984–85 (BIA 1997)). In determining whether a respondent's absence was due to "exceptional circumstances," the Court must look at the "totality of the circumstances." Singh v. INS, 295 F.3d 1037, 1040 (9th Cir. 2002); Matter of W-F-, 21 I&N Dec. 503, 509 (BIA 1996); Matter of Shaar, 21 I&N Dec. 541, 550 (BIA 1996).

Here, Respondent claims that he missed his hearing because his car did not start, which forced him to take public transportation, causing him to arrive late to the Court. See Resp't's Mot. However, a vehicle's mechanical failure does not constitute an exceptional circumstance. See Arredondo v. Lynch, No. 14-71907, 2016 WL 3034658, at *3 (9th Cir. May 27, 2016) (holding "that a car's mechanical failure does not alone compel granting a motion to reopen based on 'exceptional circumstances'"); see also Sharma v. INS, 89 F.3d 545, 547 (9th Cir. 1996) (finding that car related circumstances, including traffic congestions or difficulty with parking, are not exceptional such to rescind an *in absentia* order of removal).

Based on the foregoing, the Court declines to reopen Respondent's case on the basis of exceptional circumstances.

B. Sua Sponte

An Immigration Judge may, upon her own motion at any time, or upon motion of the Department or the respondent, reopen any case in which she has made a decision. 8 C.F.R. § 1003.23(b)(1). The decision to grant or deny a motion to reopen is within the discretion of the Immigration Judge. 8 C.F.R. § 1003.23(b)(1)(iv). The Board of Immigration Appeals (Board) has stated that "the power to reopen on our own motion is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result

in hardship.” Matter of J-J-, 21 I&N Dec. 976, 984 (BIA 1997). Proceedings should be reopened *sua sponte* only under “exceptional” situations. Id. Moreover, because finality is a key objective, the threshold for *sua sponte* reopening is extremely high. See Matter of O-, 19 I&N Dec. 871, 871 (BIA 1989).


In the present matter, although the Court acknowledges that Respondent attended his previous hearings and has two United States-citizen children, he failed to show an exceptional situation that would warrant reopening. See J-J-, 21 I&N Dec. at 984. Respondent did not explain why he did not call the Court to report his tardiness nor why he was unable to arrange alternate means of transportation. Accordingly, in the interest of finality, the Court will not exercise its discretion to reopen Respondent’s case. See O-, 19 I&N Dec. at 871.

Accordingly, the following order shall be entered:

ORDER

IT IS ORDERED that Respondent’s motion to reopen be **DENIED**.

DATE: 7/18/16


D.D. Sitgraves
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: () ALIEN () ALIEN c/o Custodial Officer () Alien’s ATT/REP () DHS

DATE: 7/19/16 BY: COURT STAFF B. CHO

Attachments: () EOIR-33 () EOIR-28 () Legal Services List () Other