U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: VAZQUEZ FERREL, CARLA AD... **A 099-222-179**

Date of this notice: 9/9/2013

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.
Pauley, Roger

Userteam: Docket

File: A099 222 179 - Miami, FL Date: SEP - 9 2013

In re: CARLA ADRIANA VAZQUEZ FERREL a.k.a. Carla A Vazquez
a.k.a. Carla Adriana Vasquez Ferrel a.k.a. Carla Adriana Vazquez Ferrel Rahman

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Olsa Alikaj-Cano, Esquire

ON BEHALF OF DHS: Amy Isackson-Rojas
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(D)(i), I&N Act [8 U.S.C. § 1227(a)(1)(D)(i)] -
Conditional resident status terminated

APPLICATION: Reopening; termination

The respondent, a native and citizen of Mexico, has appealed from the decision of the Immigration Judge dated July 31, 2012. In that decision, the Immigration Judge rescinded his prior order entered on March 5, 2012, granting the respondent's September 8, 2011, motion to reopen and rescind the in absentia removal order entered on May 4, 2010. The Immigration Judge then reinstated the in absentia removal order. On appeal the respondent renews her arguments that the Department of Homeland Security ("DHS") has not established her deportability under section 237(a)(1)(D)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(D)(i), and that she did not receive actual or constructive notice of the initiation of the instant removal proceedings. We agree with the respondent that she did not receive effective notice of the proceedings, and accordingly, we will sustain the respondent's appeal and remand the record for further proceedings consistent with this decision and order.

We disagree with the Immigration Judge's conclusion that the respondent failed to establish a lack of notice justifying her failure to appear at the hearing held on May 4, 2010. Specifically, the Immigration Judge concluded that the respondent received adequate notice of the initiation of removal proceedings because the Notice to Appear and subsequent hearing notice were delivered to the last address the respondent provided to the DHS, and the respondent failed to notify the DHS of her change of address. However, the DHS attempted to effect service of the Notice to Appear by regular mail at an address that the respondent supplied prior to the initiation of removal proceedings in conjunction with an application for lawful permanent residence that she submitted on November 20, 2004 (Respondent's M.T.R. at tab D, p. 21; Tr. at 6). The respondent has shown that she became divorced from the person with whom she resided at that address on July 19, 2007, and that her ex-husband obtained "exclusive use and possession" of the residence at that address in the marital settlement agreement (Respondent's Mot. to

Terminate at tab H, p. 28). *See* 8 C.F.R. § 1003.1(d)(3)(iv) (2013) (authorizing this Board to take administrative notice of the "contents of official documents").

Accordingly, the address that the DHS obtained by way of the respondent's application for lawful permanent residence is not a proper address under section 239(a)(1)(F) of the Act, 8 U.S.C. § 1229(a)(1)(F). The respondent never received the advisals required to be on the Notice to Appear, including the respondent's change-of-address obligations in removal proceedings, prior to being ordered removed in absentia. *See Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001) ("Entry of an in absentia order of removal is inappropriate where the record reflects that the alien did not receive, or could not be charged with receiving, the Notice to Appear that was served by certified mail at an address obtained from documents filed with the Immigration and Naturalization Service several years earlier."). For the foregoing reasons, the respondent has established a lack of notice justifying the rescission of the in absentia order entered on May 4, 2010, and reopening of the proceedings. *See* section 240(b)(5)(C)(ii) of the Act; 8 C.F.R. § 1003.23(b)(4)(ii). Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the record is remanded for further proceedings and the entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
MIAMI, FLORIDA

IN THE MATTER OF:

VAZQUEZ FERREL, CARLA
Respondent,

FILE NO.: A099 222 179

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT:
Olsa Alikaj-Cano, Esquire

ON BEHALF OF DHS:
Amy Isackson-Rojas,
Assistant Chief Counsel

ORDER RESCINDING PRIOR ORDER REOPENING PROCEEDINGS AND REINSTATING IN ABSENTIA ORDER OF REMOVAL

On March 5, 2012, the court granted the respondent's motion to reopen. Today, the court heard arguments from the respondent and the DHS regarding respondent's motion to terminate. The motion to terminate will be denied and the court's prior order reopening the proceedings will be rescinded. The court has considered all of the evidence and arguments. Although the respondent claims that she has been outside of the United States since 2006, and did not receive the notice to appear, a review of the evidence shows that the DHS terminated her conditional resident status on August 3, 2009, and served her with a notice to appear on December 30, 2009. These dates coincide with admission stamps in the respondent's passport in 2009 when she was physically in the United States. Therefore, the respondent has failed to meet her burden to show that she did not receive proper service of the notice to appear.

Accordingly, the prior order of the court reopening the proceedings is hereby rescinded and the order dated March 4, 2010, removing the respondent to Mexico in absentia is re-instated.

DONE and ORDERED this 31st day of July, 2012.

SCOTT G. ALEXANDER
Immigration Judge