U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: RUIZ-RUIZ, JOCINTO

A 097-702-282

Date of this notice: 6/21/2019

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:
Kelly, Edward F.
Mann, Ana
Morris, Daniel

Userteam: Docket

File: A097-702-282 – Philadelphia, PA Date: JUN 2 1 2019

In re: Jocinto RUIZ-RUIZ a.k.a. Jacinto Ruiz-Ruiz

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Matthew Griffin, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated January 10, 2019, denying his motion to reopen and rescind the in absentia order of removal entered on December 13, 2006. The Department of Homeland Security (DHS) did not file a response to the appeal. The appeal will be sustained, and the record will be remanded for the entry of a new decision.

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).

Pursuant to section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C), an in absentia removal order may be rescinded upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in accordance with sections 239(a)(1) or (2) of the Act, 8 U.S.C. § 1229(a)(1) or (2). Section 240(b)(5)(C)(ii) of the Act; *Matter of Guzman*, 22 I&N Dec. 722, 723 (BIA 1999). In determining whether the respondent received notice, all circumstances and evidence indicating possible non-receipt of notice must be considered. *Matter of M-R-A-*, 24 I&N Dec. 665, 674 (BIA 2008).

On September 29, 2006, the respondent was encountered during "fugitive operations at 97 Duke St., Northumberland, PA" (Exh. 3, Form I-213). On October 6, 2006, the DHS mailed the Notice to Appear (NTA) by regular mail to 97 Duke St., Northumberland, PA. The respondent contends that he did not receive notice of his hearing or order of removal (Respondent's Br. at 4-7). The respondent argues that the Immigration Judge erred in finding that he provided the "97 Duke Street" address to the immigration authorities in accordance with section 239(a)(1)(F) of the Act (Respondent's Br. at 8-11). The respondent also argues that there is no evidence in the record that he knew or stated his address to the immigration officers who apprehended him during a raid of farmworkers at 97 Duke Street, Northumberland, PA (Respondent's Br. at 8-11; Exh. 3). The respondent submitted witness affidavits and photographs indicating that the address on the NTA was wrong and that the correct address was "79 Duke Street, Northumberland, PA" (Respondent's Br. at 4-6, 9-11, Tabs A-D; Exhs. 1-3).

The respondent contends that a valid address under section 239(a)(1)(F) of the Act was not established. In *Matter of G-Y-R-*, 23 I&N Dec. 181, 192 (BIA 2001) we held that "an Immigration

Judge may not order an alien removed in absentia when the Service [DHS] mails the Notice to Appear to the last address it has on file for an alien, but the record reflects that the alien did not receive the Notice to Appear, and the notice of hearing it contains, and therefore has never been notified of the initiation of removal proceedings or the alien's obligations under section 239(a)(1) of the Act." The entry of an in absentia order of removal is inappropriate where the record reflects that an alien did not receive, or could not be charged with receiving, the NTA that was mailed to an address obtained by the DHS several years earlier. *Id.*

In this case, the DHS relied on an address, from an uncertain source whose relationship to the respondent is unknown, which was obtained by the DHS during fugitive operations conducted on September 29, 2006, and which appears to reflect the location of the operations where a group of farmworkers were apprehended (Exh. 3). On October 6, 2006, the NTA was mailed to the respondent at that address. The NTA included the time, date, and place of the hearing. On October 25, 2006, the Immigration Court mailed a NOH to the respondent at the same address and the NOH confirmed that his hearing was scheduled for December 13, 2006. The NTA and NOH were not returned to the Immigration Court as undeliverable. The respondent asserts that the address on the NTA was incorrect and has submitted affidavits to support his claim that the address on the NTA was wrong and that he did not provide the address referenced in the Record of Deportable/Inadmissible Alien and the NTA. Although the NTA was not returned as undeliverable, the record as whole is not sufficient to establish that that address used to serve the NTA was an address in accordance with section 239(a)(1)(F) of the Act or that the respondent received the NTA. Therefore, it is unclear whether the respondent received the warnings and advisals contained in the NTA. An alien cannot be expected to appear at a hearing scheduled in the NTA or to provide an address under and in accordance with section 239(a)(1)(F) of the Act until the alien is informed of the particular address obligations contained in section 239(a)(1)(F) itself. *See Matter of Anyelo*, 25 I&N Dec. 337, 339 (BIA 2010) (affirming our holding in *Matter of G-Y-R-*, that an address does not qualify as one provided under section 239(a)(1)(F) unless the notice with the necessary warnings and advisals was received at the most recent address provided by the alien). We recognize that the NTA was mailed soon after the address was recorded on the Record of Deportable/Inadmissible Alien. However, the accuracy of the address is unclear. Therefore, we conclude that the respondent cannot be charged with receiving adequate notice under *Matter of G-Y-R-*, because he apparently did not receive the NTA containing the required warnings and advisals instructing him as to his obligations to advise the Attorney General of any change of address. *Matter of G-Y-R-*, 23 I&N Dec. at 192.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and the Immigration Judge's decision is vacated. The order of removal entered in absentia, December 13, 2006, is rescinded.

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

FOR THE BOARD