



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 20530

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Law Offices of Z Zareefa Khan, P.A  
3336 Griffin Road  
Fort Lauderdale, FL 33312**

**DHS/ICE Office of Chief Counsel - MIA  
333 South Miami Ave., Suite 200  
Miami, FL 33130**

**Name: HINOJOSA, JUAN**

**A 098-239-282**

**Date of this notice: 5/5/2015**

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:  
Grant, Edward R.  
Guendelsberger, John  
Adkins-Blanch, Charles K.

Userteam: Docket

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[www.irac.net/unpublished/index/](http://www.irac.net/unpublished/index/)**

Falls Church, Virginia 20530

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File: A098 239 282 – Miami, FL

Date:

**MAY - 5 2015**

In re: JUAN HINOJOSA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Z. Zareefa Escudero, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's decision dated February 4, 2014, denying his motion to reopen and rescind the in absentia removal order entered against him on October 29, 2013. The Department of Homeland Security (DHS) has not filed a reply to the appeal. The appeal will be sustained.

Contrary to the Immigration Judge's finding, the digital audio recording (DAR) reveals that the respondent was not present with counsel on April 30, 2013, when the notice of hearing (NOH) for his October 29, 2013, hearing was served on the respondent's counsel.<sup>1</sup> The respondent's counsel admits that she failed to calendar the respondent's hearing and she maintains that the respondent's absence was due to counsel's failure to communicate to the respondent his October 29, 2013, hearing.

Upon de novo review, in light of the totality of circumstances presented in this case, including the respondent's diligence in seeking reopening, his previous appearances, and his pending citizenship application, we will sustain the appeal and allow the respondent another opportunity to appear for a hearing. See *Montano-Cisneros v. U.S. Att'y Gen.*, 514 F.3d 1224, 1226 (11th Cir. 2008) (ineffective assistance of counsel may qualify as an "exceptional circumstance").

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

<sup>1</sup> While there is some confusion among the parties whether the Immigration Judge had indeed waived the respondent's presence, the fact remains that contrary to the Immigration Judge's finding, the respondent was not present to receive oral or written notice of the October 29, 2013, hearing.

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
333 SOUTH MIAMI AVE., STE. 700  
MIAMI, FL 33130

In the Matter of:  
HINOJOSA, JUAN

Case No.: A098-239-282

RESPONDENT

Docket: MIAMI, FLORIDA

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of RESPONDENT

☒ Motion to Reconsider an Immigration Judge's decision

☐ Motion to Reopen proceedings

filed in the above entitled matter, it is hereby ordered that the motion

filed in the above entitled matter, it is HEREBY ORDERED that the motion be granted.

☒ Be Granted

☒ Be Denied for reasons indicated in the attached decision

*See  
prior decision dated Dec - 18, 2013.*

*SCA*  
SCOTT G. ALEXANDER  
Immigration Judge

Date: *2/4/2014*

Appeal: NO APPEAL (A/I/B)

Appeal Due By: Nov 29, 2013

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: *2/5/2014* BY: COURT STAFF *PAW*

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
333 SOUTH MIAMI AVE., STE. 700  
MIAMI, FL 33130

LAW OFFICES OF ZAREEFA ESCUDERO, P. A.  
ESCUDERO, Z. ZAREEFA, ESQ.  
3408 GRIFFIN ROAD  
FORT LAUDERDALE, FL 33312

Date: Dec 23, 2013

File A098-239-282

In the Matter of:  
HINOJOSA, JUAN

\_\_\_\_ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before \_\_\_\_\_. The appeal must be accompanied by proof of paid fee (\$110.00).

\_\_\_\_ Enclosed is a copy of the oral decision.

\_\_\_\_ Enclosed is a transcript of the testimony of record.

\_\_\_\_ You are granted until \_\_\_\_\_ to submit a brief to this office in support of your appeal.

\_\_\_\_ Opposing counsel is granted until \_\_\_\_\_ to submit a brief in opposition to the appeal.

\_\_\_\_ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

  
\_\_\_\_\_  
Immigration Court Clerk

UL

cc: MONICA ATKINS-WHITE, ASSISTANT CHIEF COUNSEL  
333 SOUTH MIAMI AVENUE #300  
MIAMI, FL 331300000

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

IN THE MATTER OF:

HINOJOSA, JUAN  
Respondent,

FILE NO.: A098 239 282

IN REMOVAL PROCEEDINGS

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ON BEHALF OF RESPONDENT:  
Zareefa Escudero, Esquire

ON BEHALF OF DHS:  
Office of Chief Counsel

**ORDER DENYING MOTION TO REOPEN**

The respondent has filed a motion to reconsider order of removal (*absentia*) which the court will treat as a motion to reopen. No response has been received from the Department of Homeland Security (the DHS).

Counsel alleges that the respondent's failure to appear on October 29, 2013, should be attributed to her because she failed to calendar the respondent's hearing in outlook.

Statement of the Law

Section 240(b)(5)(C) of the Immigration and Nationality Act (the Act) provides for the rescission of an *in absentia* removal order--

(i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (e)(1)), or

(ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 239(a) or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien.

Analysis

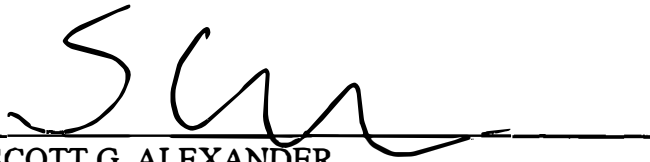
The record of proceedings reflects that the respondent was ordered removed to Mexico *in absentia*, after she failed to appear at her hearing on October 29, 2013. Her attorney was also not present.

The record reflects that the respondent and her attorney were both given notice, orally and in writing, of the date and time of the hearing at the prior hearing on April 30, 2013.

The law defines exceptional circumstances narrowly. The definition does not include scheduling errors made by a law office.

Moreover, even if respondent's attorney committed an error in regards to the hearing date, respondent has failed to address why he failed to appear inasmuch as he was present when the court gave notice, orally and in writing, of the date and time of the hearing and explained the consequences for failing to appear. Accordingly, the motion to reopen is **DENIED**.

**DONE and ORDERED** this 18<sup>th</sup> day of December, 2013.

  
SCOTT G. ALEXANDER  
Immigration Judge