



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 22041

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DHS/ICE Office of Chief Counsel - REN
3373 Pepper Lane
Las Vegas, NV 89120

Name: TAUNAHOLO, KALOLAINE

A 073-974-004

Date of this notice: 5/25/2016

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:
O'Leary, Brian M.
Grant, Edward R.
O'Connor, Blair

Published:

Userteam: Docket

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www.irac.net/unpublished/index/

JS

Falls Church, Virginia 22041

File: A073 974 004 – Reno, NV¹

Date:

MAY 25 2016

In re: KALOLAIN TAUNAHOLO

IN REMOVAL PROCEEDINGS

CERTIFICATION²

ON BEHALF OF RESPONDENT: Anish Vashistha, Esquire

ON BEHALF OF DHS: An Mai Nguyen
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Tonga, appeals from an Immigration Judge's February 17, 2015, decision denying her motion to reopen removal proceedings. The respondent was ordered removed in absentia on June 24, 2014. The Department of Homeland Security (DHS) opposes the appeal. The appeal will be sustained, proceedings will be reopened, and the record will be remanded.

Upon consideration of the totality of the circumstances presented, we are persuaded that the respondent established that the sua sponte reopening of proceedings is warranted. See 8 C.F.R. § 1003.23(b)(1). We note the respondent's assertion concerning her potential eligibility for adjustment of status. On remand, the respondent may apply for any form of relief for which she believes that she may be statutorily eligible. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the in absentia order of removal is rescinded, the proceedings are reopened, and the record is remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

¹ The removal proceedings in this case were conducted by televideo with the respondent located in Reno, NV, and the Immigration Judge located in Las Vegas, NV.

² To resolve any issues of timeliness, we will consider this matter on appeal pursuant to 8 C.F.R. § 1003.1(c).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3365 PEPPER LANE, SUITE 200
LAS VEGAS, NV 89120

TAUNAHOLO, KALOLAINÉ
165 22ND STREET
RICHMOND, CA 94801

Date: Feb 17, 2015

File A073-974-004

In the Matter of:
TAUNAHOLO, KALOLAINÉ

✓ 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 March 17, 2015. 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.

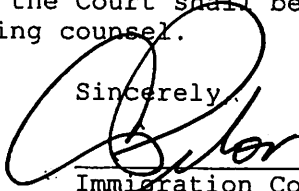
____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ 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: AN M. NGUYEN ESQ.
3373 PEPPER LAN
LAS VEGAS, NV 89120

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LAS VEGAS, NEVADA (Reno docket)

FILE NUMBER: A073 974 004

IN THE MATTER OF

Kalolaine Taunaholo

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: § 237(a)(1)(B) of the Immigration and Nationality Act
 ("INA")—Nonimmigrant—remained longer than permitted

§ 237(a)(2)(E)(i) of the Act—Convicted of offense relating to child abuse
or neglect

APPLICATION: Reopening

ON BEHALF OF THE RESPONDENT:

Pro se

ON BEHALF OF THE DHS:

An Mai Nguyen
Assistant Chief Counsel

DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent's motion to reopen, which is opposed by DHS Counsel, will be denied. The respondent was ordered removed from the United States following her failure to appear for a hearing in Reno, Nevada, on June 24, 2014. The respondent contends in her motion to reopen that she lost her hearing notice, and she mistakenly believed her hearing was scheduled for June 27, 2014. The record reflects that the respondent was given oral and written notice of the hearing scheduled for June 24, 2014. The Immigration Court informed the respondent of the date for the next hearing orally, and then mailed the hearing notice to the respondent on February 3, 2014.

The Immigration Court concludes that the instant case is controlled by the Board's decision in Matter of S-M-, 22 I&N Dec. 49 (BIA 1998). In that case, the Board found that an alien who claimed his failure to appear was the result of an "illegible hearing date" on the Order to Show Cause and Notice of Hearing had not established an "exceptional circumstance" for his

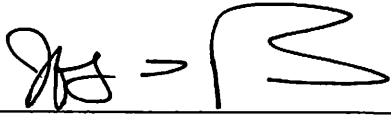
failure to appear. Id. at 50-51. Similarly in this case, the respondent advises that she mistakenly believed her case was scheduled for 3 days later than the actual date. This does not constitute an “exceptional circumstance” for her failure to appear, considering especially that the respondent was present in Immigration Court in Reno on January 28, 2014, when her case was continued, and the Court later mailed a hearing notice to the respondent personally. See INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii).

The Immigration Court has also considered the Ninth Circuit’s decision in Singh v. INS, 295 F.3d 1037 (9th Cir. 2002), while adjudicating the instant motion. In that case, the Ninth Circuit intimated that a mistaken belief as to the date and time of the scheduled hearing might constitute an “exceptional circumstance.” However, in Singh, the Court emphasized the “exceptional” nature of the facts presented in that case, including the respondent’s apparent eligibility for adjustment of status, and his appearance for all previously scheduled hearings. Id. at 1039-40. By contrast, the respondent here does not appear to be eligible for cancellation of removal, because her conviction for child neglect or endangerment bars her pursuant to section 240A(b)(1)(C) of the Act. See also Vukmirovic v. Holder, 640 F.3d 977, 978 (9th Cir. 2011)(“[T]here does not exist in this record any strong likelihood of relief” to support rescinding the in absentia order).

Accordingly, the respondent’s motion to reopen will be denied.

ORDER: The respondent’s motion to reopen is denied.

DATE: February 17, 2015



Jeffrey L. Romig
Immigration Judge