



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

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Bijev Law Firm  
1330 L Street, Ste. B  
Fresno, CA 93721**

**DHS/ICE Office of Chief Counsel - HLG  
1717 Zoy Street  
Harlingen, TX 78552**

**Name: BONILLA-SANTOS, ROSA FLOR**

**A 094-923-164**

**Date of this notice: 3/23/2016**

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.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A094 923 164 – Harlingen, TX

Date:

In re: ROSA FLOR BONILLA-SANTOS

MAR 23 2016

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hristo Kostadinov Bijev, Esquire

APPLICATION: Reopening

The respondent appeals from an Immigration Judge's decision dated October 22, 2015, denying the respondent's motion to reopen and declining to exercise his sua sponte authority to reopen proceedings. During the pendency of this appeal, the respondent submitted new evidence, showing that the Petition for Alien Relative (Form I-130) filed by her spouse on her behalf was approved on December 18, 2015. The respondent has now moved for a remand of the record based on this new evidence so that she may pursue an I-601A (Application for Provisional Unlawful Presence) waiver. The DHS has not filed any opposition to the request for a remand. We find that the motion is, in effect, unopposed. *See* 8 C.F.R. § 1003.2(g)(3) (a motion is deemed unopposed when the opposing party fails to file a timely response 13 days after service of the motion).

Accordingly, the following order will be entered.

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

2009 W. JEFFERSON AVE, STE 300  
HARLINGEN, TX 78550

Bijev Law Firm  
Bijev, Hristo Kostadinov  
1330 L Street, Ste. B  
Fresno, CA 93721

IN THE MATTER OF  
BONILLA-SANTOS, ROSA FLOR

FILE A 094-923-164

DATE: Oct 23, 2015

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

✓ 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  
2009 W. JEFFERSON AVE, STE 300  
HARLINGEN, TX 78550

OTHER: \_\_\_\_\_

Jennifer G  
COURT CLERK  
IMMIGRATION COURT

CC: ASSISTANT CHIEF COUNSEL  
1717 ZOY ST.  
HARLINGEN, TX, 785520000

FF

Immigrant & Refugee Appellate Center, LLC | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
HARLINGEN IMMIGRATION COURT  
HARLINGEN, TEXAS

IN THE MATTER OF

ROSA FLOR  
BONILLA-SANTOS

RESPONDENT

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)  
)  
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)  
)

October 22, 2015

File Number: A 094 923 164

In Removal Proceedings

APPLICATIONS: Motion to Reopen

ON BEHALF OF THE RESPONDENT

Hristo Bijev, Esq.  
1330 L St., Ste. B  
Fresno, CA 93721

ON BEHALF OF THE GOVERNMENT

Assistant Chief Counsel  
U.S. Department of Homeland Security  
1717 Zoy St.  
Harlingen, TX 78552

DECISION OF THE IMMIGRATION JUDGE

On July 3, 2007, the Court ordered Respondent removed to El Salvador *in absentia* pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act (Act). On September 21, 2015, Respondent filed a motion to reopen the removal proceeding based upon a pending petition for an alien relative (I-130), and the hardship her husband will suffer if she is removed from the country. The government has not responded. For the following reasons, the motion is denied.

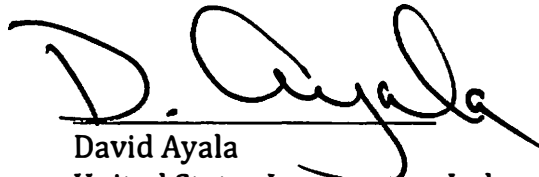
A motion to reopen may be granted based upon a pending I-130, but it must meet several factors, including that it must be timely filed. *See Matter of Velarde-Pacheco*, 23 I&N Dec. 253, 256 (BIA 2002). In order to meet the timeliness requirements, a motion to reopen must be filed within 90 days of the final removal order, unless the removal order was entered *in absentia* where the deadline is doubled to 180 days. 8 C.F.R. 1003.23(b), (b)(4)(ii). Here, the motion to reopen was filed more than eight years after the final order of removal was entered.

Further, the Court's *sua sponte* authority to reopen a removal proceeding is an "extraordinary remedy reserved for truly exceptional situations." *Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999). Although the Court recognizes the hardship removal can have on a family, which is often the case when an alien is separated from their close U.S. citizen relatives, "[t]he power to reopen on [the Court's] own motion is not meant to be used . . . to circumvent

the regulations, where enforcing them might result in hardship." *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Because Respondent has not presented a truly exceptional situation to invoke this extraordinary remedy, the Court will not reopen the proceeding *sua sponte*.

Accordingly, the following orders shall be entered:

ORDER: Respondent's motion to reopen is DENIED.

  
David Ayala  
United States Immigration Judge

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**CERTIFICATE OF SERVICE**

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

TO: ( ) ALIEN ( ) ALIEN C/O CUSTODIAL OFFICER m ALIEN'S ATTY/REP P DHS

DATE: 10-26-15 BY: COURT STAFF Vennito G

ATTACHMENTS: ( ) EOIR-33 ( ) EOIR-28 ( ) LEGAL SERVICES LIST ( ) OTHER

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