



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

**PADMA SRI, SREEDHAR RAO
H.NO. 160-10-228/3
Municipal Colony, Malakpet
Hyperbad, AP 500 036 , India**

**DHS/ICE Office of Chief Counsel - ORL
3535 Lawton Road, Suite 100
Orlando, FL 32803**

Name: PADMA SRI, SREEDHAR RAO

A099-046-696

Date of this notice: 4/25/2011

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:
Holmes, David B.

Immigrant & Refugee Appellate Center | www.irac.net

SP

Falls Church, Virginia 22041

File: A099 046 696 - Orlando, FL

Date: APR 25 2011

In re: SREEDHAR RAO PADMA SRI a.k.a. Padmasri Sreedhar Rao a.k.a. Sreedhar Rao
Padmasri a.k.a. Padma Sri Sreedhar Rao

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The respondent, a native and citizen of India, failed to appear for his hearing before the Immigration Judge on March 18, 2008, and was ordered removed in absentia. On August 31, 2010, the respondent filed a motion to reopen and rescind the removal order, which was denied by the Immigration Judge in a decision served on December 2, 2010. *See* section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii). The respondent then filed this appeal of the Immigration Judge decision. The Department of Homeland Security (DHS) has not responded to the appeal. The respondent's appeal will be sustained and, given the circumstances presented, the proceedings will be terminated.

The respondent admits in the motion to reopen that he had been removed from the United States on January 4, 2010. Subsequent to this departure, the respondent filed the motion to reopen claiming that he did not receive notice of his removal hearing. An alien's departure from the United States while under an outstanding order of deportation or removal issued in absentia does not deprive the Immigration Judge of jurisdiction to entertain a motion to reopen to rescind the order if the motion is premised on lack of notice. *Matter of Bulnes*, 25 I&N Dec. 57 (BIA 2009).

In her decision, the Immigration Judge considered that the Notice to Appear was served on the respondent on June 5, 2007, by regular mail at the address "8231 Princeton Square, Blvd, West, Apt#1011, Jacksonville, Florida, 32256" (Exh. 1). The Immigration Judge also considered that the removal order was served by regular mail on March 18, 2008, to the same address. The Immigration Judge noted that there was no evidence that either document was returned as undeliverable. From this, the Immigration Judge concluded that the respondent was properly served and failed to appear or to establish that he had not received proper notice. The respondent had provided this Jacksonville, Florida, address to DHS by a mailed change of address on February 22, 2007. However, the respondent's present filing includes evidence that he submitted additional changes of address to the DHS before the Notice to Appear was served by regular mail; that he was living at 2737 Briargrove Dr., Apt 108, Houston, Texas, on May 2, 2007; and, more importantly, that he had filed a change of address with the DHS reflecting this new Houston, Texas, address on May 15, 2007, before the Notice of Hearing was mailed. The DHS has not contested this factual history.

While this case might otherwise be remanded to the Immigration Judge for further consideration, the record now before us indicates that the respondent is no longer present in the United States; that he was not provided adequate notice of his proceedings before the Immigration Judge; and, that the respondent states in his appellate filing that his claimed lawful status expired in November 2010. Given these unusual circumstances, we will vacate the Immigration Judge's December 2, 2010, and March 18, 2008, decisions and order the proceedings terminated.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decisions in this case are vacated and the proceedings are terminated.

A handwritten signature in black ink, appearing to be 'VBM', is written above a horizontal line.

FOR THE BOARD