



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*

**Hill, Susan E., Esq.
Hill, Piibe & Villegas
523 West Sixth Street, Suite 737
Los Angeles, CA 90014-0000**

**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: SANCHEZ-PEREZ, MARGARITA

A087-148-850

Date of this notice: 5/9/2012

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:
Guendelsberger, John
Mann, Ana
Manuel, Elise L.

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A087 148 850 - Los Angeles, CA

Date:

MAY - 9 2012

In re: MARGARITA SANCHEZ-PEREZ a.k.a. Margarita Perez-Garibay

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Susan E. Hill, Esquire

The respondent, a native and citizen of Mexico, was ordered removed in absentia on August 24, 2010. On February 22, 2011, the respondent filed a motion to reopen proceedings, which the Immigration Judge denied on April 21, 2011. The respondent filed a timely appeal of that decision. The appeal will be sustained, proceedings will be reopened and the record will be remanded.

Upon review, we find that based upon the totality of circumstances presented in this case, including the change of the hearing date from September 21, 2010, to August 24, 2010, the respondent's affidavit explaining the circumstances surrounding her failure to appear at the August 24, 2010, hearing, her attendance at prior hearings, her diligence obtaining counsel and filing her motion, as well as the fact that she has an approved I-130 and appears to be eligible to adjust, we will reopen proceedings, sustaining the respondent's appeal of the Immigration Judge's denial of the motion under our de novo review authority. Accordingly, the respondent will be provided the opportunity to attend another hearing.

ORDER: The appeal is sustained, proceedings are reopened, and the record is remanded for further proceedings consistent with the above opinion.



FOR THE BOARD

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File No.: A 087 148 850)
)
In the Matter of:)
) **IN REMOVAL PROCEEDINGS**
)
SANCHEZ, Margarita)
)
)
Respondent.)

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA")
—present without admission or parole

APPLICATION: Motion to Reopen

ON BEHALF OF RESPONDENT:

Susan E. Hill, Esquire
Hill, Piibe, and Villegas, Attorneys at Law
523 West Sixth Street, Suite 737
Los Angeles, California 90014

ON BEHALF OF THE DHS:

Franklin Yu
Assistant Chief Counsel
Department of Homeland Security
606 South Olive Street, Eighth Floor
Los Angeles, California 90014

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

Margarita Sanchez ("respondent") is a native and citizen of Mexico. On September 30, 2009, the Department of Homeland Security ("DHS") served upon the respondent by regular mail a Notice to Appear ("NTA") charging her as removable under section 212(a)(6)(A)(i) of the INA. On November 5, 2009, the respondent appeared at her Master Calendar hearing before the Court. The Court reminded the respondent of her obligation to notify the Court of any change of address within five working days of such change. The Court further provided her with a Form EOIR-33, Alien's Change of Address Form/Immigration Court, and directed her to use the form to notify the Court of her address change. The respondent indicated that she understood the Court's instructions regarding a change of address. On August 4, 2010, the Court mailed a notice of hearing to the respondent indicating that her case had been rescheduled to August 24, 2010. On August 24, 2010, the respondent failed to appear for her scheduled hearing, and the Court ordered her removed *in absentia* based upon evidence presented by the DHS. On February 22, 2011, the respondent filed the present motion to reopen alleging lack of notice. The DHS filed a brief in opposition to the respondent's motion on February 28, 2011.

For the following reasons, the Court denies Respondent's motion to reopen.

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II. Law and Analysis

An *in absentia* removal order may be rescinded by the Court upon a motion to reopen filed at any time if the respondent demonstrates that she did not receive notice in accordance with INA § 239(a). INA § 240(b)(5)(C)(ii). Written notice must be provided in person to the respondent or, if personal service is not practicable, through service by mail to the respondent or to the respondent's counsel of record, if any. INA § 239(a)(1). Once the NTA has been properly served, the notice of hearing is deemed sufficient if mailed to the most recent address provided by the respondent. See INA § 240(b)(5)(A); *Matter of G-Y-R*, 23 I&N Dec. 181, 185 (BIA 2001). Moreover, the respondent can be "properly charged with receiving notice, even though [s]he did not personally see the mailed document." *Matter of G-Y-R*, 23 I&N Dec at 189. Written notice of proceedings is not required if the respondent fails to provide the Court with a written record of an address and telephone number at which she may be contacted. See INA § 240(b)(5)(B).

In the present matter, the respondent claims that she orally informed the Court of her change in address. However, oral notice of a change of address is not sufficient under INA § 239(a)(1)(F). Moreover, the Court explicitly instructed the respondent to fill out the Form EOIR-33 and file it with the Court within five days of a change of address. The Court did not indicate that providing oral notice of a change of address would be sufficient; in fact, there is no procedure for providing such notice. As the respondent failed to follow the Court's explicit order to file a Form EOIR-33 with the Court upon a change of address, her oral notice to the Court was insufficient to inform the Court of her change of address. Thus, service of notice of hearing was proper because it was sent to the respondent's last known address, and the Court will not reopen proceedings based on lack of notice. INA § 240(b)(5)(A).

Accordingly, the following order shall be entered:

ORDER

IT IS ORDERED that Respondent's Motion to Reopen is **DENIED**.

DATE: 4-21-11



Brett M. Parchert
Immigration Judge

CERTIFICATE OF SERVICE	
THIS DOCUMENT WAS SERVED BY:	
<input checked="" type="checkbox"/> MAIL (M)	<input type="checkbox"/> PERSONAL SERVICE (P)
TO: <input type="checkbox"/> ALIEN <input type="checkbox"/> ALIEN w/o Custodial Officer	
<input checked="" type="checkbox"/> ALIEN'S ATT/REP	<input type="checkbox"/> DHS
DATE: 4-21-11 BY: COURT STAFF	
Attachments: <input type="checkbox"/> EOIR-33 <input type="checkbox"/> EOIR-28	
<input type="checkbox"/> Legal Services List	<input type="checkbox"/> Other

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