



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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126 Northpoint Drive, Suite 2020
Houston, TX 77060

Name: CASTILLO-LOZANO, RODOLFO

A 097-398-041

Date of this notice: 7/22/2015

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
Holiona, Hope Malia

4/1/2011

Userteam: Docket

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Handwritten signature/initials

Falls Church, Virginia 20530

File: A097 398 041 – Houston, TX

Date: JUL 22 2015

In re: RODOLFO CASTILLO-LOZANO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kelly Marie Chicas, Esquire

ON BEHALF OF DHS: Charlotte K. Lang
Assistant Chief Counsel

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, appealed the Immigration Judge's decision, dated May 12, 2014, which denied the respondent's motion to reopen his in absentia removal proceedings. The record will be remanded.

We review an Immigration Judge's findings of fact for clear error; but questions of law, discretion, and judgment, and all other issues in appeals, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

Upon our de novo review, in light of the totality of the circumstances presented in this matter, we conclude that the respondent maintained his address with the Department of Homeland Security during the lengthy period in which the case was administratively closed. Therefore, we will sustain the appeal and reopen the proceedings to allow the respondent another opportunity to appear for a hearing. Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, the in absentia order is rescinded, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
600 Jefferson St. #900
Houston, TX. 77002

KELLY M. KECKLER ESQ.
P.O. BOX 36668
ROCKHILL, SC. 29732

DATE: 5/12/14

IN THE MATTER OF: RODALFO CASTILLO-LOZANO FILE: A097-398-041

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 20530

— 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
600 JEFFERSON ST. #900
HOUSTON, TX. 77002

✓ OTHER: *Sh. G. order.*

Sh. York

COURT CLERK
IMMIGRATION COURT

FF

CC: CHARLOTTE K. LANG
OFFICE OF CHIEF COUNSEL, DHS
126 NORTHPOINT DR. #2020
HOUSTON, TX. 77060

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

IN THE MATTER OF:)
)
RODOLFO CASTILLO-LOZANO,)
)
RESPONDENT)

FILE NO. A097-398-041

ORDER DENYING RESPONDENT'S MOTION TO REOPEN

Came on for consideration the Respondent's Motion to Reopen filed March 6, 2014. The Court, after considering the Motion and the Government's Opposition, enters this order DENYING the motion.

Respondent was ordered removed on February 19, 2013 due to Respondent's failure to appear at the master calendar hearing, which was held on that date. Respondent's motion includes a statement that he was never aware of the hearing, and further indicates that his attorneys at the time were Jimmy Delgado and Claudia Delgado of the Delgado Law Firm. Respondent says that Jimmy Delgado resigned from the practice of law in lieu of disciplinary action. Respondent says that Claudia Delgado is no longer associated with the Delgado law firm. Respondent admits that he moved after he was placed in removal proceedings and that he did not provide the Court with his new address.

Respondent's motion contains at least one bit of incorrect information. Respondent was represented by Claudia Avalos, and that apparently is the same "Claudia" as Claudia Delgado. At no point does the record show that Respondent was represented (at least in court) by Jimmy Delgado. Consistent with Respondent's explanation of what happened is a letter to Respondent in the Court's

file showing that the Notice of hearing was sent directly to Respondent at the last address he had provided, but that it was returned with the stamp “Return to Sender- Attempted Not Known Unable to Forward.” This is consistent with Respondent’s statement that he moved several years prior to the date of the in absentia hearing and did not provide the Court with his new address.

The Court finds the evidence consistent with Respondent’s explanation of events. The question becomes whether he deserves to have the case reopened when he failed to provide a correct address. The Court recognizes that the case was administratively closed on August 19, 2003, and the next hearing after that set for February 19, 2013. Respondent did not provide his address to Ms. Avalos, his attorney, which apparently resulted in his failure to know about the February 19, 2013. Respondent does not cite to any circumstances justifying his failure to stay in touch with Ms. Avalos¹. Respondent’s move to a different state does not justify his failure to stay in touch.

A second reason to deny the Motion to Reopen is because Respondent does not identify potential relief. Respondent does indicate a desire to seek a U-visa based on the tragic events which surrounded his entry into the U.S., including the death of many individuals who also were being smuggled into the country. However, the events described occurred in 2003. Respondent claims to be acting diligently in seeking a U-visa, having now hired counsel to do so, but Respondent made no effort to get a U-visa between 2003 and now. Respondent refers to the fact that he received humanitarian parole and work authorization after 2003, but the work authorization expired in 2009²

¹ The fact that Mr. Delgado is not practicing law is not relevant since this Court does not see where Mr. Delgado ever was on record as representing Respondent. The attorney-client relationship was with Ms. Avalos. Additionally, the Court notes that Respondent has not brought a Lozada action against Ms. Avalos.

² This means that Respondent did not pursue a U-visa until several years after his work authorization expired. Respondent has not acted diligently.

and, regardless, the existence of parole and work authorization do not toll the time for diligently seeking the U-visa.

Having failed to provide valid reasons for granting his Motion to Reopen, it is ORDERED that Respondent's Motion to Reopen is DENIED.



Immigration Judge
Chris A. Brisack

Date: May 12, 2014

cc: all parties