



**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

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Attorney at Law  
2470 Windy Hill, Rd # 138  
Marietta, GA 30067**

**DHS/ICE Office of Chief Counsel - WAS  
1901 S. Bell Street, Suite 900  
Arlington, VA 22202**

**Name: NKONGHO, FELIX AGBOR ANYI... A 096-112-440**

**Date of this notice: 3/31/2017**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby  
Acting Chief Clerk

Enclosure

Panel Members:  
Pauley, Roger

Userteam: Docket

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[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

Falls Church, Virginia 22041

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File: A096 112 440 – Arlington, VA

Date:

MAR 31 2017

In re: FELIX AGBOR ANYIOR NKONGHO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kell Enow, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -  
Fraud or willful misrepresentation of a material fact (not sustained)

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -  
Immigrant - no valid immigrant visa or entry document (sustained)

APPLICATION: Reopening

The respondent, a native and citizen of Cameroon, has appealed from an Immigration Judge's August 20, 2013, decision denying his motion to reopen and reconsider. The Department of Homeland Security ("DHS") has not filed a response to the respondent's appeal. The record will be remanded.

On December 8, 2011, the Immigration Judge found the respondent removable pursuant to the charge under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), and ordered him removed from the United States in absentia after he failed to appear at his scheduled hearing. On July 30, 2013, the respondent filed a motion to reopen and reconsider with the Immigration Judge, alleging that his failure to appear for his December 8, 2011, hearing was because of exceptional circumstances beyond his control and that he did not know about the hearing because he was living in Afghanistan and had a lack of communication with his attorney and his family. He also requested that the Immigration Judge reopen the proceedings sua sponte.

The Immigration Judge denied the respondent's motion to reopen and reconsider, finding that the DHS established removability, that the respondent left the United States after personal service of the Notice to Appear, and that the entry of an in absentia order is required under *Matter of Sanchez-Herbert*, 26 I&N Dec. 43 (BIA 2012). On appeal, the respondent argues that the DHS did not prove removability as charged, that *Matter of Sanchez-Herbert*, *supra*, does not apply, and that he did not have notice of the hearing because his attorney was unable to reach him and exceptional circumstances prevented him from appearing.

We find that a remand is necessary because the record does not contain the evidence relied upon and clear findings of fact by the Immigration Judge to determine the respondent's removability as charged in the Notice to Appear. The Immigration Judge stated in his

December 8, 2011, order that the respondent was found removable as charged under section 212(a)(7)(A)(i)(I) of the Act but did not explain or cite to the evidence relied upon to make the finding. Moreover, on July 20, 2009, the Immigration Judge vacated his prior March 19, 2009, in absentia order because the Form I-213 that he relied upon in the prior order to find that the DHS had proved removability is not in the record. We conclude that the Form I-213 is still not part of the record, and the Immigration Judge has not explained on what basis the respondent is removable. Thus, the record does not contain clear, convincing, and unequivocal evidence that the respondent is deportable as charged, and the Immigration Judge did not appropriately order the respondent removed in absentia. See 8 C.F.R. § 1003.26(c)(1). Thus, we will remand the record to the Immigration Judge to fully address the issue of whether the DHS has met its burden by clear, convincing and unequivocal evidence to establish that the respondent is removable as charged. See *Matter of Sanchez-Herbert*, *supra*, at 44 (stating that the purpose of in absentia proceedings is to determine whether the DHS can meet its burden to establish that the alien, who did not appear, received proper notice and is removable as charged).

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

  
\_\_\_\_\_  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
1901 S. BELL STREET, SUITE 200  
ARLINGTON, VA 22202

ENOW & ASSOCIATES  
ENOW, KELL ESQ.  
2470 WINDY HILL RD, #138  
MARIETTA, GA 30067

Date: Aug 26, 2013

File A096-112-440

In the Matter of:  
NKONGKO, FELIX A

\_\_\_\_ 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 \_\_\_\_\_. 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,

Van V. J. J. J.

Immigration Court Clerk

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cc: RAPHAEL H. CHOI, DHS CHIEF COUNSEL  
1901 S. BELL STREET, SUITE 900  
ARLINGTON, VA 22202

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

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
ARLINGTON, VA, 22202

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In the Matter of :  
FELIX AGBOR NKONGHO :  
Respondent :  
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A. 096 112 440

**ON BEHALF OF BCIS**

**BCIS Trial Attorney**  
Department of Homeland Security  
US CIS  
1901 S Bell Street  
Arlington, Va, 22202

**ON BEHALF OF RESPONDENT**

**KELL ENOW, Esq.**  
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Marietta, GA 30067

WRITTEN ORDER

Upon consideration of the Respondent's Motion to reopen/reconsider/stay in removal proceedings filed in the above-entitled matter, the record herein, it is hereby ordered that the Motion be **GRANTED**. *DENIED. The Respondent left the US after receiving personal service of her NTA. The DHS established removability. Entry of the in absentia order is required under matter of Sanchez-Herbert, 261 F.3d 1133, 1134 (9th Cir. 2001).*

The case is reset for the \_\_\_\_\_ day of \_\_\_\_\_ 2013 at \_\_\_\_\_ a.m./p.m. for status/merit hearing.

**DONE AND ORDERED**, this 20<sup>th</sup> day of August 2013 in  
Arlington, Virginia.

  
U.S. Immigration Judge