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In the Matter of:))
) File No. A
) File No. A
Respondents)
	

Post-Decision Motion

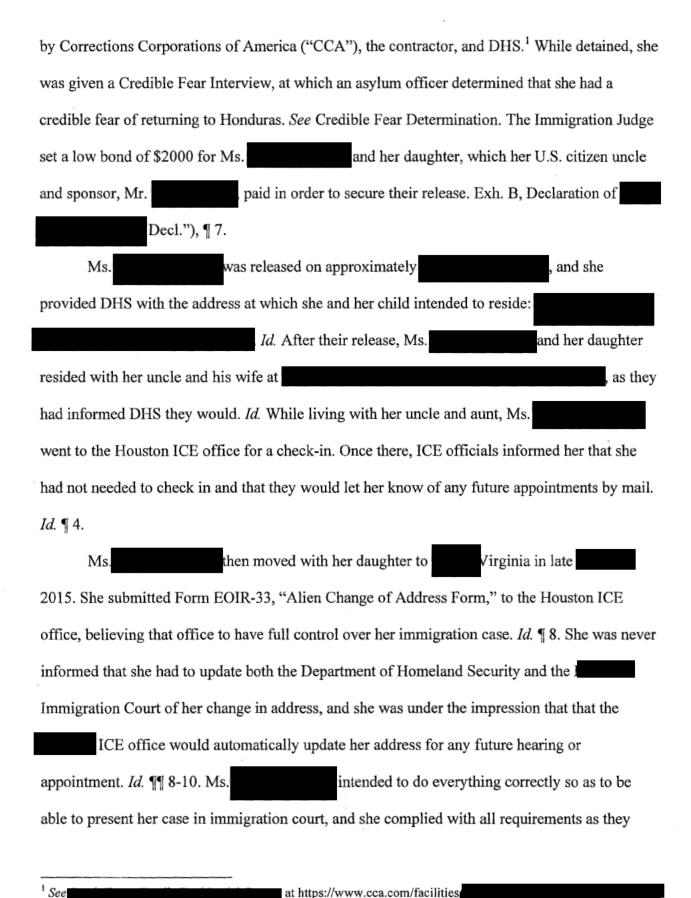
MOTION TO REOPEN PROCEEDINGS AND RESCIND IN ABSENTIA REMOVAL ORDER

NO FEE REQUIRED PER 8 C.F.R. §§ 1003.23(b)(1), 1003.24, 1103.7 AS MOTION BASED ON ASYLUM

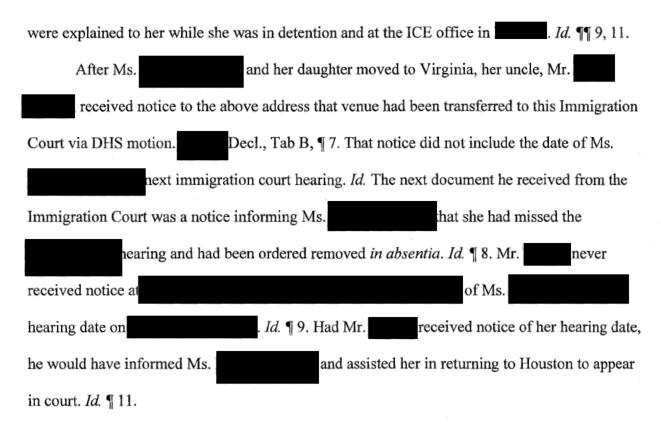
AUTOMATIC STAY OF REMOVAL PER INA §240(b)(5)(C)

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

In the Matter of:	
	File No.
)	File No.
Respondents)	,
MOTION TO DECREN PROCE	TEDINGG AND
MOTION TO REOPEN PROCE RESCIND <i>IN ABSENTIA</i> REMO	
Respondents,	,
respectfully request that this Court rescind its	in absentia order of removal
and reopen their proceedings pursuant to INA § 240(b)(5)	(C)(ii), 8 C.F.R. § 1003.23(b)(4)(ii),
because they did not receive notice of their	hearing. Because their failure to
appear was due to lack of notice and exceptional circumst	ances, their removal from the United
States is automatically stayed until such a time as the Cou	rt renders a decision. INA
§240(b)(5)(C).	
Statement of Facts and Procedural History	
came to the United S	States with her three-year-old daughter
to escape death threats in Honduras stemming from her fa	ther's murder and their involvement in
the Christian Democrat party. Declaration of	
Decl."), Tab A, ¶ 2. She was apprehended upon arrival in	the United States and held at the
for approxin	nately one month. The



3



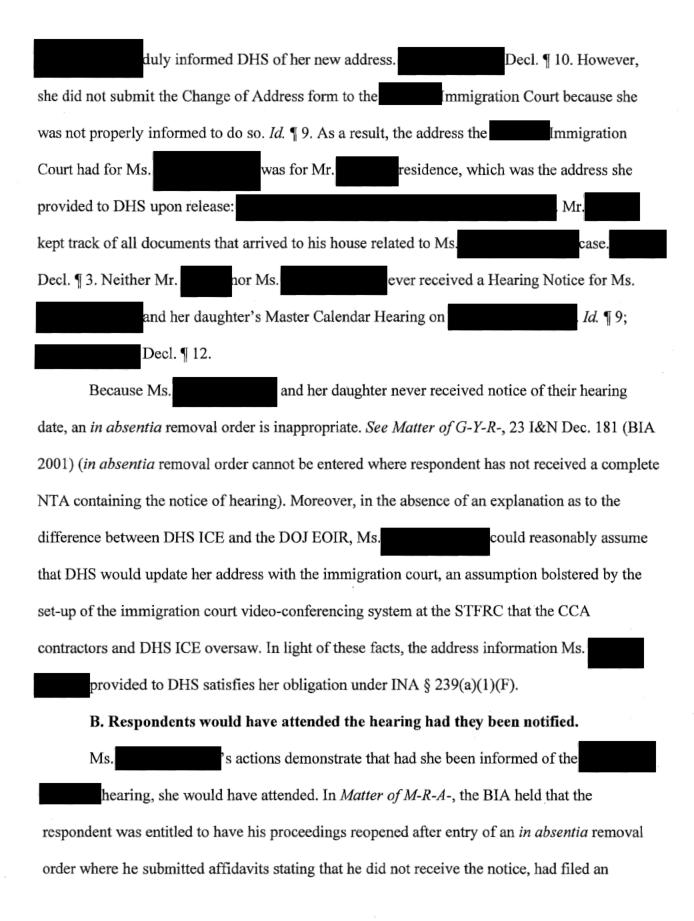
Legal Argument

Respondents Have Demonstrated that Their Failure to Appear was Due to Lack of Notice.

An order of removal *in absentia* may be rescinded at any time upon a showing that the respondent did not receive notice of the hearing at which they were ordered removed due to failure to appear. INA § 240(b)(5)(C)(ii). This court must consider "all relevant evidence submitted," including the respondent's own sworn declaration, in determining whether Ms. has demonstrated that she did not receive notice. *Matter of M-R-A-*, 24 I&N Dec. 665, 673-74 (BIA 2008).

A. Respondents complied with INA § 239(a)(1)(F).

INA § 239(a)(1)(F) requires that a respondent provide the Attorney General with their address and inform the Attorney General of any change in address. It does not require that any specific form be submitted nor that the respondent notify the proper Immigration Court. Ms.



application for affirmative relief, had appeared at an earlier hearing, and exercised due diligence in promptly requesting reopening of proceedings. 24 I&N Dec. at 674-75. Like the respondent in *Matter of M-R-A-*, Ms.

seeks affirmative relief in the form of asylum, has complied with all instructions to report that she has received, and makes the prompt request to reopen proceedings. In fact, Ms.

reported to DHS ICE in Houston when she did not need to report. Ms.

has a colorable claim for asylum as evidenced by her credible fear determination. *See* Credible Fear Determination, Tab C. She has every reason to attend her immigration court hearings in order to gain asylum and legal immigration status in the United States. She would have attended her Immigration Court hearing had she received notice.

Decl. ¶ 10. As soon as Ms.

learned that she could submit a Motion to Reopen, she diligently prepared this motion. *Id.* ¶ 14.

immigration court hearing. Due process requires that a respondent be provided with notice of proceedings and an opportunity to be heard. *Matter of G-Y-R*, 23 I&N Dec. 181 (BIA 2001) (citing *Landon v. Plasencia*, 459 U.S. 21, 32-33 (1982); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945); *Kaoru Yamataya v. Fisher*, 189 U.S. 86, 101 (1903)). Because Ms. and her daughter did not receive notice despite demonstrated efforts to comply with DHS instructions regarding reporting and maintaining current contact information, due process requires that the *in absentia* removal orders against them be rescinded and their proceedings be reopened.

II. Respondents present exceptional circumstances for missing her master calendar hearing that warrant rescission of the *in absentia* removal order and reopening of her case.

An alien ordered removed *in absentia* may rescind the order "upon a motion to reopen filed within 180 days after the date of the order of removal or deportation if the alien

demonstrates that the failure to appear was because of exceptional circumstances; or upon a motion to reopen filed at any time if the alien demonstrates: (1) that he or she did not receive notice in accordance with INA § 239(a)(1) or (2) [removal proceedings], INA § 242B(a)(2) [deportation proceedings], or; (2) the alien demonstrates that he or she was in Federal or State custody and the failure to appear was through no fault of the alien." INA §240(b)(5)(C)(i). Ms. failure to appear at the hearing was due to exceptional circumstances. Not only did she not receive a hearing notice, but she was also never informed of the difference between the ICE office in that the ICE office would inform her of any future appointments or hearings and would automatically update her address. As such, she moves this Court to rescind the in absentia order and to reopen these removal proceedings. issued on Assuming arguendo that Ms. did receive notice, which she does not concede, there were exceptional circumstances that prevented her from attending her hearing. In an unpublished decision in the matter of A A099 623 872 (BIA Oct. 30, 2013), the Board of Immigration Appeals ("BIA" or "the Board") found that an alleged clerical error by the immigration court advising respondent to appear the day after his hearing constitutes exceptional circumstances. Similarly, unawareness of a new hearing date was held to constitute exceptional circumstances in another unpublished decision in (BIA May 31, 2013). Ms. the matter of M provided a correct address to ICE while she and her daughter were detained at the Center in Texas. After her release, Ms. was entirely reliant on her uncle for assistance in tracking her appointments and court dates because she does not read or understand English, Ex. A. Decl. ¶¶ 4, 7; Exh. B, Decl., ¶¶ 4, 5. Ms.

also relied on the information provided to her by ICE officers in the detention facility, and they did not fully explain the requirements for changing her address in immigration court or the difference between the court and the ICE office. Ms

thus believed that she was complying with the instructions given to her when she submitted the form to the ICE office in Houston; she thought they would take care of transferring her whole case to an office in Virginia.

Ex. A,

Decl. ¶¶ 8, 11.

Moreover, since her release on bond, someone at the address she provided has regularly checked the mail. Exh. B, Decl. ¶ 3. As she never received the Notice of Hearing and only received an in absentia order, it seems that, even if Ms. and been checking her mail every day, the Immigration Court either did not send the Notice of Hearing or sent it to the wrong address, or the U.S. Post Office delivered it to the wrong address. Therefore, this case is analogous to A (BIA Oct. 30, 2013) and (BIA May 31, 2013) as Ms. seems to have experienced Immigration Court or U.S. Post Office clerical error, leading her to be unaware of her new hearing date and causing her to miss it. The BIA has held that there is a weaker presumption of delivery where notice is sent by regular mail. Matter of M-R-A-, 24 I&N Dec. 665 (BIA 2008). This holding indicates that the Board has specifically contemplated that problems with the mail can and do occur.

Dated: 1_____, 2016

Respectfully submitted,

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

In the Ma	atter of:)			
)))	File I		
Respond	ents))			
	OR	DER OF THE IMMIGRA	ATION J	UDGE	
		ndent's Motion to Reopen Y ORDERED that the mot			
/ — / — — —	A response to Good cause ha	oppose the motion. the motion has not been files been established for the rees with the reasons stated in	motion.		ion.
Date	Immigration Judge				
This doc	ument was served by	Certificate of Ser		al Service	
То:	[] Alien	[] Alien c/o Custodial O	fficer	[] Atty/Rep	[] DHS
Date:		By: Court Staff			

Respondents:
CERTIFICATE OF SERVICE
I, hereby certify that I served the attached Motion to Rescind <i>In Absentia</i> Removal Order and Reopen Proceedings and supporting documents upon the Office of Chief Counsel, Department of Homeland Security, onby mail to:
Department of Homeland Security Office of Chief Counsel
NAME