



Removal Defense

Online Course

American Immigration Lawyers Association

Module 7: Motions to Reopen and Motions to Reconsider

Exercise: Storytelling in a Motion to Reopen



A critical but underutilized and underappreciated aspect of legal writing – whether in motions, briefs or pleadings—is the art of storytelling. With Motions to Reopen, storytelling can often be the difference between a motion that is granted and one that is denied. In this exercise, use the following

facts and exhibits, as you think are necessary, to craft a compelling and persuasive story to describe the events that led to the Respondent, Selma Singer, missing her court date.

Facts:

1. Respondent, Selma Singer, is a native and citizen of the county of Xanadu.
2. Respondent failed to appear in court on October 24, 2013 and the Court entered an Order of Removal in absentia.
3. Respondent had submitted a change of address form (EOIR-33/IC) on September 5, 2013 to the immigration court; this was the same day she moved to a house across the street from where she previously lived.
4. The immigration court returned and rejected the filing but included a blank EOIR-33 with arrows that highlighted information for Selma to complete.
5. Respondent completed the forms and returned it to court.
6. Respondent did not list an A number on any of the filings.
7. On December 11, 2013, when Respondent appeared for her check in with ICE, the ICE officer advised her that an order of removal has been entered against her.
8. After Respondent provided copies of the submitted documents, the ICE officer did not take Respondent into custody to allow her the opportunity to file a Motion to Rescind In Absentia



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Exhibits:

- Exhibit A: Respondent's statement
- Exhibit B: EOIR-33/IC dated 9/5/2013
- Exhibit C: EOIR-33/IC-#2
- Exhibit D: Bond check in sheet
- Exhibit E: October 24, 2013 Order of Removal

Instructions:

The pages that follow are a Motion to Reopen for Selma Singer, with everything pre-completed except for the “**Facts**” section (highlighted below). Use your storytelling skills to convey the facts of Selma's situation in a compelling way that communicates clearly why Selma merits the granting of this motion. Save the completed version of the motion and upload it in the next component of the course.

The faculty response to this includes a facts section of 3 paragraphs and under 1000 words. Tell the story in your own way, but there is no need to go beyond this length.



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Attorney for Respondent

NOT DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ANY TOWN, WA**

IN THE MATTER OF:

Selma Singer
Respondent

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)
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)
)

IN REMOVAL PROCEEDINGS
A222-111-333

Immigration Judge: Law

Next Hearing: None

**MOTION TO RE-OPEN IN ABSENTIA ORDER
FOR LACK OF NOTICE
(No fee required; automatic stay provisions triggered)**



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IN THE MATTER OF:

Selma Singer
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IN REMOVAL PROCEEDINGS
A222-111-333

**MOTION TO REOPEN IN ABSENTIA ORDER
FOR LACK OF NOTICE**

Respondent, Selma Singer by and through her attorney, J. Attorney, moves the Immigration Judge to Reopen her removal proceedings pursuant to 8 C.F.R. § 1003.23(b) (4)(ii), In support of her motion, Respondent states as follows:

Facts

**[WRITE THE FACTS SECTION HERE
TO TELL SELMA'S STORY IN A COMPELLING WAY]**

Law and Argument

The BIA has held that an in absentia order is inappropriate where the record reflects that the alien did not receive, or could not be charged with receiving, the Notice to Appear. *In re G-Y-R*, 231 I&N Dec. 181 (BIA 2001).

Respondent could not and did not receive the Notice of Hearing. The evidence establishes that Respondent attempted to properly notify the Court of her change of address and that the Court actually utilized her new address in returning her forms. Unfortunately, Respondent did not understand, because no one had ever explained it to



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her, that all files in the immigration system function based on the “A-number”. As a pro se litigant and despite her best efforts, Respondent was unsuccessful in properly submitting her change of address because she did not include her A-number on the submission.

The Board and the Courts have indicated that “reopening based on lack of notice is not warranted where a respondent's lack of actual notice resulted from her failure to comply with the obligation to provide her correct and current address” *See generally, Gomez-Palacios v. Holder*, 560 F.3d 354 (5th Cir. 2009) . However, in the current matter, Respondent did not knowingly or willfully fail to comply with her obligation. In fact, quite the contrary occurred; she repeatedly attempted to provide her new address to the Court. Since the Court had used Respondent’s new address to provide her with additional forms, Respondent was certain, albeit incorrectly, that she had fulfilled her obligation properly. When Respondent’s conduct in appearing for her check-in, is juxtaposed with her belief, it becomes evident that Respondent was under the assumption that her hearing notice was still to come. Thus, the evidence clearly overcomes the presumption of delivery in the instant matter. The current order of removal pending against Respondent is invalid and should be set aside. *See Matter of M-R-A*, 24 I&N Dec. 665 (BIA 2008).

WHEREFORE, Respondent urges this Court to rescind the in absentia order and re-open proceedings.

Respectfully submitted this _____ day of January, 2014,

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CERTIFICATE OF SERVICE

This is to certify that I have served one copy of the foregoing, MOTION TO REOPEN IN ABSENTIA ORDER was served on G. Lawyer, Deputy Chief Counsel by e-mail at _____ on this ___ day of January, 2014.

J. ATTORNEY, Esq.
Attorney for Respondent