



Removal Defense Online Course

American Immigration Lawyers Association

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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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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 REMOVAL PROCEEDINGS
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**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

Sometimes a case comes along where even the Agents of Immigration and Customs Enforcement see the equity in not executing an in absentia order because lack of notice is so evident. In the instant matter, Respondent, Selma Singer, thought she had done everything correctly. She had acted responsibly in promptly notifying the Immigration Court when she moved. **(See attached Exhibit A; Respondent’s statement)**. However for laypersons, trying to navigate alone through immigration court procedures, good intentions are often insufficient to avoid the harsh consequences of a mistaken filing.

On September 5, 2013, Selma moved across the street from where she had been living. On the very same day, she mailed to the Immigration Court in Any Town, an EOIR-33/IC Alien’s change of address Form. Not fully understanding English, she did the best she could and completed the form. **(See attached Exhibit B; EOIR-33/IC dated 9/5/2013)**. The Court rejected it and returned the form, to Selma’s new address. Included with the rejection was another EOIR-33/IC. This form contained arrows that highlighted information for Selma to complete. Once again, trying to comply, Selma completed the form and returned it to the Court. Her new address was listed as the return address. **(See attached Exhibit C; EOIR-33/IC-#2)**. Selma did not receive anything further.



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Believing she had complied with the notification requirements and in an effort to meet the conditions of her release, on December 11, 2013, Selma appeared at her scheduled check-in with Immigration and Custom's Enforcement. It was only at that time she discovered that on October 24, 2013, an order of removal had been issued against her. **(See attached Exhibit A, D, and E).** The Immigration and Custom's Enforcement Agent listened to what Selma told him and looked at the copies of documents she had kept showing her efforts to notify the Court. The Agent understood that Selma had tried, but failed, in her efforts to pilot through the immigration system. Trusting that Selma had in fact not received notice for her hearing, the Agent allowed Selma to remain out of custody so long as she quickly obtained help and filed a Motion to Re-Open her proceedings. Selma kept her promise with the Agent and immediately began her efforts taking the steps necessary to rescind the order in her case and reopen her immigration proceedings. It is what she now requests the Court to do so that he may have her opportunity to be heard. **(See attached Exhibit A; Respondent's statement).**

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 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



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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