



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

April 5, 2017

Mr. Matt Adams, Esq.
Northwest Immigrant Rights Project
2601 N. Pinal Pkwy
615 2nd Ave., Suite #400,
Seattle, Washington 98104

RE: **Northwest Immigrant Rights Project
D2017-0104**

Dear Mr. Adams:

It has recently come to the attention of this office that at least one staff member from the Northwest Immigrant Rights Project (NWIRP) has attempted to advocate on behalf of F [redacted], and [redacted]; A [redacted]; *et. al.*, before the Executive Office for Immigration Review (EOIR) Immigration Courts, without entering a Notice of Entry of Appearance Form EOIR-28.

On June 7, 2016, a Motion to Reopen Proceedings was filed at the Tacoma Immigration Court in Mr. [redacted]'s case. The motion contained a notation that NWIRP assisted in the preparation of the *pro se* motion. On November 18, 2016, a Motion to Reopen Proceedings was filed at the Seattle Immigration Court in Ms. [redacted]'s case. The motion stated that it was being filed with the assistance of NWIRP and included an asylum application prepared by NWIRP Staff Attorney Maggie Cheng. In each of these cases, no one from NWIRP entered a Notice of Appearance.

In order to represent¹ individuals in matters before an Immigration Judge, a person must

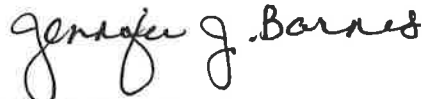
¹"Representation" as defined in 8 C.F.R. §1001.1(j) includes "preparation" and "practice." "Preparation" as defined in 8 C.F.R. §1001.1(k) means the study of the facts of a case and the applicable laws coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedures. "Practice" as defined in 8 C.F.R. § 1001.1(i) means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document,

file a Notice of Entry of Appearance Form EOIR-28. See 8 C.F.R. § 1003.17(a). EOIR may impose disciplinary sanctions against a practitioner who fails to file a Notice of Entry of Appearance, pursuant to the Rules and Procedures of Professional Conduct for Practitioners. See 8 C.F.R. § 1003.102(t). By holding attorneys accountable for their conduct, this rule makes it possible for EOIR to impose disciplinary sanctions on attorneys who do not provide adequate representation to their clients.

Here, at least one staff member from NWIRP clearly represented Mr. [redacted] and Ms. [redacted] by engaging in “preparation” and “practice” of their motions to reopen. In addition, Mr. [redacted]’s signature on his Motion to Reopen appears to be inconsistent with his signature on December 21, 2015, requesting a custody redetermination by an Immigration Judge. This difference could indicate that someone other than Mr. [redacted] drafted his motion to reopen.

We conclude that NWIRP’s practice of representing aliens before EOIR without filing the appropriate Notice of Entry of Appearance form is in violation of federal regulations. We ask that NWIRP cease and desist from representing aliens unless and until the appropriate Notice of Entry of Appearance form is filed with each client that NWIRP represents.

Sincerely,



Jennifer J. Barnes
Disciplinary Counsel

Enclosures: *Matter of [redacted]*
Motion to Reopen, dated May 16, 2016;
Notice of Custody Determination, dated December 21, 2015; and,

Matter of [redacted]
Motion to Reopen with Attachments, dated November 14, 2016.

paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1623 EAST J STREET, SUITE 3
TACOMA, WASHINGTON 98421

In the Matter of

(
(print your name here)

Respondent.

A _____
(write your A number here)

IN REMOVAL PROCEEDINGS
DETAINED

Motion to Reopen

I, Travis, proceeding *pro se*, wish to reopen my case. On 5/11/16, the govt amended the charges to add an agg felony. I did not receive notice of this (many times immigration detainees at NEX (ok have problems with the mail). I did not understand what was happening at the hearing and it went very quickly. I didn't understand what an agg felony was and how to fight it. I want to fight my LPR cancellation case because my USC sister has end stage renal disease & I would like to see if I can give her a kidney transplant. Please allow me to reopen my case.

Respectfully submitted on:

Date

TTS

Signature

Respondent, *pro se*

CERTIFICATE OF SERVICE

I, _____ do hereby certify that I
(print your name here)

y

Mailed

Hand delivered

Served electronically on the Chief Counsel's Office located in the NWDC at
scattleocefilings@dhs.gov

Placed in the ICE drop box inside the main entrance to the Northwest Detention Center

a true and correct copy of the attached to:

Chief Counsel
Immigration and Customs Enforcement
1623 East J Street, Suite 2
Tacoma, WA 98421

Date: 1/1/11

Signed: _____

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF CUSTODY DETERMINATION

Alien's Name: _____

A-File Number _____

Date: 12/21/2015

Event ID: _____

Subject ID: _____

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

- Detained by the Department of Homeland Security.
- Released (check all that apply):
 - Under bond in the amount of \$ _____
 - On your own recognizance.
 - Under other conditions. (Additional document(s) will be provided.)

GLADISH, MICHAEL
Name and Signature of Authorized Officer

12/21/2015 09:12 AM

Date and Time of Custody Determination

8000

Title

Yakima, WA Sub-Office 3701 River Road Yakima, WA US 98902

Office Location/Address

You may request a review of this custody determination by an Immigration Judge.

- I acknowledge receipt of this notification, and
 - I do request an immigration judge review of this custody determination.
 - I do not request an immigration judge review of this custody determination.

Signature of Alien

12-21-15
Date

The contents of this notice were read to _____
(Name of Alien)

in the SPANISH _____ language.
(Name of Language)

CURTIS, KC 6085

Name and Signature of Officer

N/A
Name or Number of Interpreter (if applicable)

DO

Title

Guatemala; (3) applied for admission to the United States at Nogales, AZ, on [redacted], [redacted]; and (4) are ineligible for admission to the United States because, at the time of admission, they were not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry documents required by the Act. [*Id.*]

At master calendar hearing held on July 19, 2016, the respondents appeared *pro se* before the Court. The matter was continued to September 21, 2016, for a Mam interpreter. Respondent again appeared *pro se*, and the matter was continued to November 9, 2016. [Notice of Hearing (“NOH”), 9/21/16.] Respondent was instructed to bring her asylum application to her next hearing. [*Id.*] The Court noted that if the Form I-589 was filed at the next hearing, it will be deemed timely filed by the Court. [*Id.*]

Respondents failed to appear for their November 9, 2016, hearing, and the Court ordered them removed in absentia to Guatemala. [Order of the IJ, 11/9/16.] The Northwest Immigrant Rights Project is assisting her in submitting this motion to reopen.

ARGUMENT

A court may, upon its own motion at any time, or upon motion of DHS or the alien, reopen any case in which it has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. 8 C.F.R. § 2003.23(b)(1).

A. The motion to reopen is timely and is not numerically barred.

Generally, the Court may reopen an order entered *in absentia* if a motion to reopen is filed within 180 days after the date of the order of removal, and the respondent demonstrates that the failure to appear was because of exceptional circumstances. INA § 240(b)(5)(C)(i). Here the Court issued the *in absentia* orders on November 9, 2016. Therefore, the motion to reopen is timely in that it was filed within 180 days of the final administrative decision. Because this is

respondents' first motion to reopen, this motion is not numerically barred under 8 C.F.R. § 1003.23(b)(1).

B. Respondents can demonstrate that their failure to appear was due to exceptional circumstances.

Respondents regrettably missed their court hearing due to a mistranslation of their hearing notice, causing them to believe that their hearing was set for later in November.

Respondent expressed fear of return to Guatemala when she sought admission into the United States in October 2014. [I-867B.] More than ten months later, the Asylum Office finally determined that they were unable to conduct a credible fear interview due to lack of a Mam interpreter, and "that an NTA would be issued to avoid undue delay in the processing of the case and to afford the applicant all possible avenues to have her claim of fear heard." [USCIS Memo, at 11.] The Notice to Appear was issued on August 25, 2015. However, due to Court backlog, respondents were not scheduled for their initial master calendar hearing until July 19, 2016. [NOH, 4/6/16.] Respondents appeared at their long-awaited July 19, 2016, hearing, only to have their hearing continued for another three months to September 2016 for a Mam interpreter. [NOH, 7/19/16.]

At the September hearing, the Court set for a hearing on November 9, 2016. [NOH 9/21/16.] Unfortunately, respondent z could not remember her exact court date in November. [Decl., at 9.] She could not read the hearing notice given to her by the Court as she is illiterate and uneducated. [Id.] She therefore asked someone to translate the hearing notice for her. [Id.] However, the person she had asked mistranslated the notice and told her that her hearing was on November 20, 2016. [Id.] Respondent was thus misled to believe that her hearing was on the 20th.

Mistakenly believing that her hearing was on November 20th, Respondent was scheduled for an appointment with the Northwest Immigrant Rights Project (NWIRP) on November 10, 2016, to assist her with completing Form I-589 for submission at her next hearing. [*Id.*] When she went to her appointment, NWIRP reviewed her case, contacted the EOIR hotline, and discovered that she had missed her hearing the previous day, and had been ordered removed in absentia. [*Id.*]

Respondent was shocked to learn that she had missed her court date. [*Id.*] She had every intention to attend her court hearing. [*Id.*] Respondent dutifully attended prior hearings and updated her address with the Court. There was no indication that the respondent sought to interfere with or otherwise delay her proceedings. Rather, she had patiently waited for the government to process her case. Far from avoiding her court obligations, she had made an appointment with legal services and intended to submit her asylum application at her next hearing. Had she known that her hearing was on November 9th, she would not have made an appointment to complete her asylum application for the day after her hearing. Upon learning of her removal order, respondent files this motion to reopen at the earliest opportunity (after the federal holiday and weekend). Respondent thus acted diligently in her immigration matters, and should not be faulted for the mistake of another. The mistranslation of her hearing notice qualifies as an exceptional circumstance excusing her failure to appear. After waiting so long to have her asylum claim heard, respondent would not have just abandoned her claim with the safety of her family at stake, and affirms that she definitely would have attended her hearing had she known that it was on the 9th. [*Id.*]

C. Respondent is prima facie eligible for relief.

Respondent [redacted], is *prima facie* eligible for relief in the form of asylum, withholding of removal, and protection under the Convention Against Torture.

Respondent submits Form I-589, Application for Asylum and Withholding of Removal, with this motion. In light of the fact that her one-year filing deadline had long passed due to government delay, the Court noted that it would deem her asylum application as timely filed if it was submitted by her next hearing. [NOH, 11/9/16.] Respondent had intended to submit her asylum application at her next hearing, mistakenly believing that it was on November 20th. Respondent respectfully requests that the Court honor its previous statement and accept her concurrently filed application as timely filed.

[redacted] is eligible for asylum as a victim of domestic violence. *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). [redacted] suffered past persecution and can establish a well-founded fear of future harm by her ex-partner and father of her children. [redacted]'s ex-partner "physically, verbally, and sexually abused [her.] He was also physically abusive towards the children." [Form I-589, at 16.] [redacted] rez has tried to leave her abuser, but her abuser found her and threatened to take away her children. [*Id.*] [redacted] thus had to take her children and flee Guatemala to escape her abuser. [Decl., at 9.] [redacted] credibly fears that her partner would harm and possibly even kill her for leaving him, and carry out his threat to take her children. [Form I-589, at 16.]

Based on the foregoing, respondents respectfully request this Court to rescind the *in absentia* order of removal and reopen their matter, such that [redacted] can pursue her asylum claim. In the alternative, respondents request this Court exercise its *sua sponte* authority to reopen this matter.

Respectfully submitted this 14th day of

[Faint, illegible handwritten text]

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