U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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CASTRO-TUM, REYNALDO
[redacted]

DHS/ICE Office of Chief Counsel - PHI
900 Market Street,
Suite 346
Philadelphia, PA 19107

Name: CASTRO-TUM, REYNALDO **A 206-842-910**

Date of this notice: 11/27/2017

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Liebowitz, Ellen C
Kendall Clark, Molly
Greer, Anne J.

Userteam: Docket

File: A206 842 910 – Philadelphia, PA

Date: NOV 27 2017

In re: Reynaldo CASTRO-TUM

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Joseph C. Scott
Assistant Chief Counsel

The Department of Homeland Security (DHS) has appealed from the Immigration Judge's decision dated April 18, 2016, administratively closing the respondent's removal proceedings.[1] We find it appropriate to exercise our jurisdiction over this case and address the DHS's appeal. The order administratively closing these proceedings will be vacated, and the record will be remanded for further proceedings.

The respondent was placed in removal proceedings pursuant to a Notice to Appear dated June 28, 2014; it was alleged that the respondent was a native and citizen of Guatemala who arrived in the United States on or about June 26, 2014, and was not then admitted or inspected by an Immigration Officer. The record reflects that the respondent was scheduled for a hearing before an Immigration Judge on April 18, 2016.[2]

At the time of the hearing, the respondent was 19 years old and had been designated an unaccompanied alien child (UAC). The respondent failed to appear for the hearing and the DHS requested that a removal order in absentia be entered. *See* section 240(b)(5) of the Immigration and Nationality Act; 8 U.S.C. § 1229a(b)(5). The Immigration Judge declined to enter an in absentia order and instead administratively closed the respondent's removal proceedings over the objection of the DHS. *See Matter of Avetisyan*, 25 I&N Dec. 688, 690 (BIA 2012), *clarified Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017). The Immigration Judge expressed concerns over the foundation and basis for the address listed on the Notice of Hearing that was sent to the respondent (Tr. at 3, 9-12). Specifically, he questioned the reliability of the address provided for

[1] The DHS has filed a Request for Concurrent Consideration of Appeals in this case. We considered this appeal in conjunction with the appeals referenced in the DHS request. However, we will issue individual decisions in each case.

[2] We note that this was the fourth Notice of Hearing sent to the respondent at this address, and none of the notices were returned to the Immigration Court as undeliverable.

the respondent by the U.S. Department of Health and Human Service's Office of Refugee Resettlement (HSS-ORR).

The DHS argues on appeal that the Immigration Judge erred in administratively closing the removal proceeding, where the respondent failed to appear and the DHS submitted relevant and probative evidence to support its motion for an in absentia order of removal. The DHS contends that HHS-ORR is the federal agency charged with the proper placement of UACs with sponsors pending removal proceedings, and absent specific and articulable evidence that HHS-ORR was derelict in its responsibilities, the Immigration Judge should have given weight to the official HHS-ORR form in question. The DHS requests that the Board vacate the administrative closure order and direct the Immigration Judge to mail notice of the hearing to the last known address for the respondent, which is currently that provided by HHS-ORR. If the respondent fails to appear, the DHS contends, an in absentia order should be entered (DHS Br. at 13).

The Act provides that any alien who, after being provided written notice, does not attend immigration proceedings, shall be ordered removed in absentia if the DHS has established by clear, unequivocal, and convincing evidence that written notice of the hearing date was provided. *See* section 240(b)(5)(A) of the Act. The administrative record in this case contains evidence that the respondent was personally served with the Notice to Appear. The Notice to Appear included warnings to the respondent that it was his responsibility to provide an updated full mailing address to the DHS, and that if he failed to appear, a removal order could be entered in his absence. *See Ramos-Olivieri v. Atty'y Gen. of U.S.*, 624 F.3d 622, 623 (3d Cir. 2010) (in absentia order is appropriate where alien had not made effort to contact immigration authorities with a change of address despite being notified of obligation in the Notice to Appear and as a condition of release from custody).

After the Notice to Appear was issued, the HHS-ORR issued a Release Notification that certified that, "the [r]espondent and [s]ponsor w[e]re notified that they must inform the immigration Court directly of any further change of address." The address in this document was the address used for the Notice of Hearing.

Upon considering his experiences in other cases, the Immigration Judge expressed doubts about how the respondent's address was secured by HHS-ORR (Tr. at 3, 10). However, each case must be evaluated on its own particular circumstances and facts. Moreover, we apply a presumption of regularity to the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that public officers have properly discharged their official duties. *See United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). Therefore, where there is no evidence that government documents, including those from HHS-ORR, are not reliable, the presumption of regularity applies.[3]

[3] The procedure for procuring an address for an unaccompanied alien child is set by statute and further delineated in ORR guidelines. *See* 6 U.S.C. § 279; see also *ORR Guide: Children Entering the United States Unaccompanied*, at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied.

Under the circumstances presented, we will vacate the administrative closure order and remand the record for further proceedings. Although the Immigration Judge appears to have presumed that addresses provided through the established DHS-ORR procedures are inherently unreliable, this is not supported by any evidence in this record and the presumption of regularity should be applied. Therefore, on remand, a new Notice of Hearing should be issued as requested by DHS, and if the respondent again fails to appear, the Immigration Judge should proceed according to section 240(b)(5) of the Act, which governs the consequences of an alien's failure to appear.[4]

Accordingly, the following order will be entered.

ORDER: The DHS's appeal is sustained, and the order administratively closing these proceedings is vacated.

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

Ellen Rubowitz
FOR THE BOARD

[4] We note that even if an in absentia order is entered, the respondent has the ability to challenge its issuance pursuant to a properly filed motion to reopen and rescind. 8 C.F.R. § 1003.23(b)(4)(ii).