File: (b) (6) [redacted] Date: MAR 2 2 2007

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carolina Colin-Antonini, Esquire[1]

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

APPLICATION: Adjustment of status

This matter was last before us on December 6, 2005, when we adopted and affirmed an Immigration Judge's February 4, 2005, order denying the respondent's post-removal motion to reopen. The respondent, a native and citizen of Mexico, had alleged that he did not receive notice of his hearing, and moved to reopen the proceedings that had culminated in the issuance of an *in absentia* removal order. In accordance with *Patel v. U.S. Attorney General*, 334 F.3d 1259 (11th Cir. 2003), the controlling case law, the Immigration Judge found that he lacked jurisdiction to reopen the proceedings subsequent to the respondent's removal. On appeal, we reasoned that, pursuant to 8 C.F.R. § 1003.2(d) and our precedent decisions, we lacked jurisdiction to consider a motion to reopen filed by an alien who had departed the United States pursuant to a final order of removal.

The matter is now before us on remand from the United States Court of Appeals for the (b)(6) [redacted] Circuit, which has considered the interplay between *Patel v. U.S. Attorney General*, *supra*, and 8 C.F.R. § 1003.23(b)(4)(ii), which provides that a removal order may be rescinded upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing. The Court concluded that *Patel* is inapposite in the instant case because 8 C.F.R. § 1003.23(b)(4)(ii) permits an alien to file a motion to reopen *in absentia* proceedings at any time. *See* (b) (6) [redacted] *v. U.S. Attorney General* (b) (6) [redacted] The Court remanded the case to us for further consideration. *See id.*

In light of the (b) (6) [redacted] holding that the Immigration Judge retains jurisdiction to reopen the proceedings to address whether the respondent received sufficient notice of his removal hearing,

[1] We note that the attorney of record who entered a Notice of Appearance before the Board did not represent the respondent before the Court of Appeals for the (b)(6) [redacted] Accordingly, a courtesy copy of this order is being sent to Leslie A. Diaz, Esquire.

(b) (6) [redacted]

we will vacate the Immigration Judge's order denying the motion to reopen and remand the record for further proceedings consistent with the (b) (6) [redacted] opinion and this order.

ORDER: The Immigration Judge's order denying the motion to reopen is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with this order and the entry of a new decision.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) [redacted]

Date: DEC - 6 2005

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carolina Colin-Antonini, Esquire

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision").

The respondent, a citizen of Mexico, was ordered deported from the United States on July 23, 2002, because he failed to appear for his hearing. On June 11, 2003, he was removed from the United States by the Department of Homeland Security ("DHS"). On December 8, 2004, he filed a motion to reopen with the Immigration Judge arguing he did not receive the Notice of Hearing. The motion to reopen was denied by the Immigration Judge on February 4, 2005. In his decision, the Immigration Judge concluded that he had no jurisdiction to reopen the proceedings subsequent to the removal of the respondent. *See Patel v. US Attorney General*, 334 F. 3d. 1259 (11th Cir. 2003). The Immigration Judge's ruling has been appealed to the Board. On appeal, the respondent argues that the DHS incorrectly removed from the United States because he was not notified of his hearing, and the Immigration Judge and Board retain jurisdiction to consider the argument.

This Board lacks jurisdiction to consider motions to reopen or reconsider filed by aliens who have departed the United States pursuant to a final administrative order of removal, deportation or exclusion. *See* 8 C.F.R. § 1003.2(d); *Matter of G-N-C-*, 22 I&N Dec. 281, 288 (BIA 1998); *Matter of Okoh*, 20 I&N Dec. 864, 865 (BIA 1994). The Immigration Judge was therefore correct to deny reopening. We further find nothing illegal regarding the respondent's removal. He was subject to a final order of removal, a stay of removal was not pending, and it was properly executed.

(b) (6)

[redacted]

Accordingly, the appeal is dismissed.

FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

In the Matter of:
(b) (6)

RESPONDENT

Case No. (b) (6)

Docket (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of respondent's

( ) Motion to Reconsider an Immigration Judge's decision

(✓) Motion to Reopen proceedings

filed in the above entitled matter, it is hereby ordered that the motion

( ) Be Granted

(✓) Be Denied for reasons indicated in the attached decision; Respondent has already been removed; no jurisdiction. Patel v. US Atty Gen. 334 F 3d 1259 (11th Cir. 2003)

Wayne K. Houser Jr.
WAYNE K. HOUSER, JR
Immigration Judge
Date: Feb 4, 2005

Appeal: WAIVED (A/I/B)
Appeal Due By:

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] Alien's ATT/REP [✓] ~~INS~~
DATE: 2-7-05 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) [redacted]

Date: JUN 0 9 2005

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carolina Colin-Antonini, Esquire

By Direction of the Board,

This is a pending appeal for which the record of proceedings has not been forwarded. Multiple attempts to have the record located and forwarded to the Board have been unsuccessful. The Board cannot proceed in this case without the record of proceedings. Accordingly, the matter is remanded to the Immigration Court for recovery of the record, or, if necessary, for further proceedings and entry of a new decision so that the required record can be created.

Lori Scialabba

FOR THE BOARD