8 USCS § 1229

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United States Code Service > TITLE 8. ALIENS AND NATIONALITY (Chs. 1 — 15) > CHAPTER 12. IMMIGRATION AND NATIONALITY (§§ 1101 — 1537) > IMMIGRATION (§§ 1151 — 1382) > INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL (§§ 1221 — 1232)

§ 1229. Initiation of removal proceedings

(a) Notice to appear.

(1) In general. In removal proceedings under section 240 [*8 USCS § 1229a*], written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

(F)

(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240 [*8 USCS § 1229a*].

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under section 240(b)(5) [*8 USCS § 1229a(b)(5)*] of failure to provide address and telephone information pursuant to this subparagraph.

(G)

(i) The time and place at which the proceedings will be held.

(ii) The consequences under section 240(b)(5) [*8 USCS § 1229a(b)(5)*] of the failure, except under exceptional circumstances, to appear at such proceedings.

(2) Notice of change in time or place of proceedings.

(A) In general. In removal proceedings under section 240 [*8 USCS § 1229a*], in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying—

(i) the new time or place of the proceedings, and

(ii) the consequences under section 240(b)(5) [*8 USCS § 1229a(b)(5)*] of failing, except under exceptional circumstances, to attend such proceedings.

(B) Exception. In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) Central address files. The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) Securing of counsel.

(1) In general. In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 240 [*8 USCS § 1229a*], the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

(2) Current lists of counsel. The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 240 [*8 USCS § 1229a*]. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

(3) Rule of construction. Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 240 [*8 USCS § 1229a*] if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) Service by mail. Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

(d) Prompt initiation of removal.

(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) Certification of compliance with restrictions on disclosure.

(1) In general. In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (*8 U.S.C. 1367*) have been complied with.

(2) Locations. The locations specified in this paragraph are as follows:

(A) At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15) [*8 USCS § 1101(a)(15)*].

History

HISTORY:

June 27, 1952, ch 477, Title II, Ch 4, § 239, as added Sept. 30, 1996, *P. L. 104-208*, Div C, Title III, Subtitle A, § 304(a)(3), *110 Stat. 3009*-587; Jan. 5, 2006, *P. L. 109-162*, Title VIII, Subtitle C, § 825(c)(1), *119 Stat. 3065*; Aug. 12, 2006, *P. L. 109-271*, § 6(d), *120 Stat. 763*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Effective date of section:

Amendment Notes

2006.

Other provisions:

Transfer of functions:

Explanatory notes:

A prior § 239 of Chapter 4 of Title II of Act June 27, 1952, ch 477, which formerly appeared as *8 USCS § 1229*, was redesignated § 234 of such Chapter by Act Sept. 30, 1996, *P. L. 104-208*, Div C, Title III, Subtitle A, § 304(a)(1), *110 Stat. 3009- 587*. Such section was reclassified to *8 USCS § 1224* by the compilers of the United States Code.

Effective date of section:

This section took effect on the first day of the first month beginning more than 180 days after the date of the enactment of Act Sept. 30, 1996, *P. L. 104-208*, pursuant to § 309(a) of Division C of such Act, which appears as *8 USCS § 1101* note.

Amendment Notes

2006.

Act Jan. 5, 2006 (effective and applicable as provided by § 825(c)(2) of such Act, which appears as a note to this section), added subsec. (e).

Act Aug. 12, 2006, in subsec. (e)(2)(B), substituted “(U)” for “(V)”.

Other provisions:

Effective date and applicability of Jan. 5, 2006 amendment. Act Jan. 5, 2006, *P. L. 109-162*, Title VIII, Subtitle C, § 825(c)(2), *119 Stat. 3065*. provides: “The amendment made by paragraph (1) [adding subsec. (e) of this section] shall take effect on the date that is 30 days after the date of the enactment of this Act and shall apply to apprehensions occurring on or after such date.”.

Consideration of military service in removal determinations.

Act Dec. 20, 2019, *P.L. 116-92*, Div A, Title V, Subtitle G, § 570B(b), *133 Stat. 1399*, provides:

"(1) In general. With regards to an individual, an immigration officer shall take into consideration evidence of military service by that individual in determining whether—

"(A) to issue to that individual a notice to appear in removal proceedings, an administrative order of removal, or a reinstatement of a final removal order; and

"(B) to execute a final order of removal regarding that individual.

"(2) Definitions. In this subsection:

"(A) The term 'evidence of service' means evidence that an individual served as a member of the Armed Forces, and the characterization of each period of service of that individual in the Armed Forces.

"(B) The term 'immigration officer' has the meaning given that term in section 101 of the Immigration and Nationality Act (*8 U.S.C. 1101* et seq.).".

Transfer of functions:

For abolition of the Immigration and Naturalization Service, transfer of functions, and treatment of related references, see transfer of functions note under *8 USCS § 1551*.

NOTES TO DECISIONS

14.Delay in delivery

15.Non-receipt of notice

16.—Presumption of delivery or receipt

17.—Constructive receipt

18.—Failure to provide mailing address

19.—Change of address

20.— —New address not used

21.— —Failure to provide notice of change

22.—Incorrect address information used

23.Recipient of notice

24.Miscellaneous

102.Miscellaneous

I. IN GENERAL

1. Constitutionality

Application of exceptional and extremely unusual hardship standard set forth in *8 USCS § 1229b(b)(1)* to given set of facts is reviewable as question of law under *8 USCS § 1252(a)(2)(D)*. *Wilkinson v. Garland, 601 U.S. 209, 144 S. Ct. 780, 218 L. Ed. 2d 140, 30 Fla. L. Weekly Fed. S. 82, 2024 U.S. LEXIS 1380 (2024)*.

Permanent rules under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), *P. L. 104-208* div. C, *110 Stat. 3009*, were not impermissibly retroactive as applied to alien who admitted to Immigration and Naturalization Service (INS) just prior to the IIRIRA's effective date that alien was in United States illegally, where INS did not commence proceedings against alien until after the IIRIRA's effective date. *Jimenez-Angeles v. Ashcroft, 291 F.3d 594, 2002 Cal. Daily Op. Service 4399, 2002 D.A.R. 5639, 2002 U.S. App. LEXIS 9600 (9th Cir. 2002)*.

Any due process right of an alien to effective assistance of counsel in removal proceedings did not extend to waiver of removal on basis on family hardship, relief which was purely discretionary, since an alien has no due process right to a hearing to determine his eligibility for relief that is purely discretionary. *Gutierrez-Morales v. Homan, 461 F.3d 605, 2006 U.S. App. LEXIS 21367 (5th Cir. 2006)*.

2. Relation to other laws

Where alien, lawful permanent resident, pled guilty to felony before Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was enacted and traveled abroad for week after IIRIRA's enactment, IIRIRA's new admission provision, *8 USCS § 1101(a)(13)(C)(v)*, did not apply to alien's conviction, because § 1101(a)(13)(C)(v) attached new disability (denial of reentry) in respect to past events (alien's pre-IIRIRA offense, plea, and conviction); alien's pre-IIRIRA conviction, not present travel, was wrongful activity Congress targeted in §

1101(a)(13)(C)(v). *Vartelas v. Holder, 566 U.S. 257, 132 S. Ct. 1479, 182 L. Ed. 2d 473, 23 Fla. L. Weekly Fed. S 237, 2012 U.S. LEXIS 2540 (2012)*.

Motion to reopen deportation proceedings' 90 day time limit under did not conflict with *8 USCS § 1153(a)*, (b) or *8 USCS § 1255(a)*, (i). *Ekimian v. INS, 303 F.3d 1153, 2002 Cal. Daily Op. Service 9394, 2002 D.A.R. 10547, 2002 U.S. App. LEXIS 18709 (9th Cir. 2002)*.

Although motion to rescind is type of motion to reopen, it is distinctive in that motion to reopen for purposes of rescinding in absentia removal order seeks to restart proceedings as if previous proceedings never occurred; because different requirements pertain to each type of motion to reopen, when alien files single motion that seeks both rescission of in absentia removal order on enumerated ground, *8 USCS § 1229a(b)(5)(C)*, as well as reopening of removal proceedings based on new evidence, court treats motion as comprising distinct motions to rescind and to reopen, and review each under applicable substantive standards. *Alrefae v. Chertoff, 471 F.3d 353, 2006 U.S. App. LEXIS 30818 (2d Cir. 2006)*.

Word "jurisdiction" is often used colloquially, so its inclusion in the transitional provision of the Illegal Immigration Reform and Immigrant Responsibility Act does not mean that Congress meant to limit an immigration judge's power to act; given the frequency of this colloquial usage, Congress's reference to jurisdiction in the transitional provision does not mean that a defect in the notice to appear is jurisdictional. *United States v. Lira-Ramirez, 951 F.3d 1258, 2020 U.S. App. LEXIS 7070 (10th Cir.)*, cert. denied, *141 S. Ct. 830, 208 L. Ed. 2d 407, 2020 U.S. LEXIS 5479 (2020)*.

3. —Predecessor statute

Petition for review of denial of alien's motion to reopen removal proceedings on ground that that alien did not receive notice of hearing was granted because it was abuse of discretion to apply evidentiary presumptions applicable under predecessor statute, *8 USCS § 1252b(a)(2)(A)*, which required that notice of hearing in removal proceeding be given by certified mail, where *8 USCS § 1229(a)(1)* permitted notice by regular mail. *Salta v. INS, 314 F.3d 1076, 2002 Cal. Daily Op. Service 12473, 2002 D.A.R. 14698, 2002 U.S. App. LEXIS 27125 (9th Cir. 2002)*.

4. Applicability

Alien was not "in deportation proceedings" on effective date of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), *Pub. L. No. 104-208*, *110 Stat. 3009* (1996), because no charging document had been filed against her at that time, and, accordingly, transitional rules of IRRIRA did not apply to her case and she was not eligible for suspension of deportation under former *8 USCS § 1254* (repealed); rather than being served with order to show cause under *8 USCS § 1252b(a)(1)* (repealed)—pre-IIRIRA charging document—alien was served with notice to appear for deportation proceedings under *8 USCS § 1229(a)*, which was only charging document available after IIRIRA's effective date, and, thus, there was no error in immigration judge's determination that stricter permanent provisions of IIRIRA, rather than transitional rules, governed alien's case. *Martinez-Garcia v. Ashcroft, 366 F.3d 732, 2004 U.S. App. LEXIS 8070 (9th Cir. 2004)*.

Alien could not successfully argue that Office of Chief Immigration Judge (CIJ) directive stated deliberate policy to delay filing orders to show cause as effective date of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), *Pub. L. No. 104-208*, *110 Stat. 3009* (1996) approached in order to subject aliens to IIRIRA's more stringent requirements; it was well settled that decision to place alien in immigration proceedings, and when to do it, belonged to Immigration and Naturalization Service (as opposed to CIJ), and was akin to prosecutorial discretion, and, thus, CIJ's directive could have had no binding effect upon alleged decision to place alien in deportation proceedings after IIRIRA's effective date. *Martinez-Garcia v. Ashcroft, 366 F.3d 732, 2004 U.S. App. LEXIS 8070 (9th Cir. 2004)*.

Alien was not "in deportation proceedings" on effective date of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), *Pub. L. No. 104-208*, *110 Stat. 3009* (1996), because no charging document had been filed against her at that time and, accordingly, IIRIRA's transitional rules did not apply to her case and she was not eligible for suspension of deportation under former *8 USCS § 1254* (repealed); rather than being served with order to show cause under *8 USCS § 1252b(a)(1)* (repealed) (pre-IIRIRA charging document), alien was served with notice to appear for deportation proceedings under *8 USCS § 1229(a)*, which was only charging document available after IIRIRA's effective date and, thus, there was no error in immigration judge's determination that IIRIRA's stricter permanent provisions, rather than transitional rules, governed alien's case. *Martinez-Garcia v. Ashcroft, 366 F.3d 732, 2004 U.S. App. LEXIS 8070 (9th Cir. 2004)*.

Unpublished decision: REAL ID Act of 2005 provisions relating to agency credibility determinations did not apply where alien sought re-opening of his asylum and restriction on removal relief determination in April 2004. *Zhen v. Gonzales, 175 Fed. Appx. 222, 2006 U.S. App. LEXIS 8734 (10th Cir. 2006)*.

Unpublished decision: Because there was no question that possession with intent to deliver controlled substance within 1,000 feet of public school was punishable under *21 USCS § 860*, BIA correctly concluded that alien's state drug conviction under *N.J. Stat. Ann. § 2C:35-7* constituted aggravated felony within meaning of *8 USCS § 1101(a)(43)(B)*; accordingly, alien was not eligible for cancellation of removal under *8 USCS § 1229(a)*. *Marte v. AG of the United States, 339 Fed. Appx. 265, 2009 U.S. App. LEXIS 16830 (3d Cir. 2009)*.

Alien's challenge to his conviction for illegal reentry, *8 U.S.C.S. § 1326(a)*, alleging that the IJ in his first removal case lacked jurisdiction to issue a removal order because the notice to appear did not contain a hearing date and time, failed; *8 C.F.R. § 1003.14(a)* was not jurisdictional, and further, the notice was not required to contain a date and time. The definition of "notice to appear" in *8 U.S.C.S. § 1229(a)(1)* did not apply. *United States v. Cortez, 930 F.3d 350, 2019 U.S. App. LEXIS 21131 (4th Cir. 2019)*.

5. Relation to claims for asylum

Filing of asylum petition by alien did not constitute commencement of removal proceedings for purposes of determining applicable commencement date for determining length of time of actual physical presence necessary for eligibility for cancellation of removal; as such, alien was not eligible for cancellation of removal. *Uspango v. Ashcroft, 289 F.3d 226, 2002 U.S. App. LEXIS 8755 (3d Cir. 2002)*.

Board of Immigration Appeals did not abuse its discretion by finding aliens' motions to reopen their asylum cases to be untimely and not subject to equitable tolling because there was evidence that aliens knew that their cases had been denied when another family member made inquiries, but failed to move to reopen until some two years later. *Patel v. Gonzales, 442 F.3d 1011, 2006 U.S. App. LEXIS 7781 (7th Cir. 2006)*.

Although application for asylum was timely, court denied aliens' petition for review because aliens failed to establish well-founded fear of future persecution since all of main incidents specifically described by aliens were well in past and regime that fostered them had long since been supplanted; further, Immigration Judge (IJ) did not compromise fairness of hearing or violate aliens' due process rights by operating as hostile adversary by interrupting testimony and directing lines of inquiry from attorneys because after reading hearing transcripts, court concluded that no infirmity existed since IJ, like all judicial officers, possessed broad but not unfettered discretion over conduct of evidentiary proceedings under *8 USCS § 1229(b)(1)*, and IJ appeared to have permissibly used that discretion and to have provided aliens with sufficient opportunity to present their case; moreover, there was no indication of unreasonable restrictions or failure to allow witnesses to present their full story. *Jorgji v. Mukasey, 514 F.3d 53, 2008 U.S. App. LEXIS 1344 (1st Cir. 2008)*.

6. Tardiness for hearing

Petition for review was granted, where alien showed that alien's case was exceptional case under 8 USCS § 1252b(c)(3)(A); although alien was late for his hearing by two hours, it would have been absurd to uphold deportation order, where alien was beneficiary of approved visa petition and his deportation could have resulted in ouster of alien's family, who were all American citizens. *Singh v. INS, 295 F.3d 1037, 2002 Cal. Daily Op. Service 6212, 2002 D.A.R. 7789, 2002 U.S. App. LEXIS 14003 (9th Cir. 2002)*, cert. denied, *539 U.S. 941, 123 S. Ct. 2605, 156 L. Ed. 2d 626, 2003 U.S. LEXIS 4819 (2003)*.

Where alien was four and one-half hours late for scheduled removal hearing and there was no showing that immigration judge was still on bench hearing cases when alien arrived, alien failed to appear for hearing and failed to demonstrate exceptional circumstances to justify reopening proceedings notwithstanding her nonappearance. *Valencia-Fragoso v. INS, 321 F.3d 1204, 2003 Cal. Daily Op. Service 2054, 2003 U.S. App. LEXIS 3931 (9th Cir. 2003)*.

BIA abused its discretion in denying an alien's motion to reopen his removal case without an evidentiary hearing where a new hearing was needed to address two key issues, i.e., the materiality of the Tigray civil war to the alien's risk of torture given his birthplace, and whether the alien was an Ethiopian citizen under Ethiopia's jus sanguinis conception of citizenship. *Menghistab v. Garland, 37 F.4th 1240, 2022 U.S. App. LEXIS 17054 (7th Cir. 2022)*, modified, review or reh'g granted in part, reh'g denied, remanded, *2022 U.S. App. LEXIS 22814 (7th Cir. Aug. 17, 2022)*.

7. Failure or inability to appear at hearing

Given fact that alien was entitled to have his counsel present at deportation hearing and alien's counsel had timely informed immigration judge (IJ) that he had been required to appear that day in United States district court in different proceeding and had requested continuance of immigration hearing, IJ's decision to proceed in absentia and to disregard attorney's motion for continuance was arbitrary and capricious given totality of circumstances. *Herbert v. Ashcroft, 325 F.3d 68, 2003 U.S. App. LEXIS 6607 (1st Cir. 2003)*.

Alien's failure to appear at hearing, on grounds that he had filed motion to change venue and had expected it to be granted where INS had not objected, was not "exceptional circumstance" warranting relief from in absentia order of removal; motion to change venue was not granted because it did not arrive at courthouse before hearing. *Georcely v. Ashcroft, 375 F.3d 45, 2004 U.S. App. LEXIS 14254 (1st Cir. 2004)*.

Unpublished decision: Alien's motion to reopen following his in absentia removal order was properly denied because: (1) motion to reopen was filed beyond 180-day period set forth in 8 C.F.R. § 1003.23(b)(4)(iii)(A)(1); (2) written notices sent to alien's counsel and to alien satisfied statutory notice requirements in 8 USCS § 1229(a)(1), and alien also was given oral notice of hearing; and (3) there was no evidence that alien was in custody on date of hearing, and even if he were in custody, no evidence suggested that he was prevented from informing immigration judge of his custody and his inability to attend hearing or requesting alternative arrangements. *Fajardo-Lazil v. AG of the United States, 159 Fed. Appx. 378, 2005 U.S. App. LEXIS 27687 (3d Cir. 2005)*.

Unpublished decision: Immigration judge did not abuse her discretion in ordering, in absentia, removal of applicant for asylum who did not attend hearing on pending asylum application, because applicant's claim that he was seriously ill was belied by fact that, on day of hearing, he had attended appointments at both his doctor's and his lawyer's offices, because applicant had failed to notify court that he was ill, and because ruling ordering him removed in absentia did not conflict with existing Board of Immigration Appeals precedent. *Jomande v. Gonzales, 181 Fed. Appx. 48, 2006 U.S. App. LEXIS 11914 (2d Cir. 2006)*.

8. Miscellaneous

Timely filing of motion to reopen or reconsider under 8 USCS §§ 1229, 1229a automatically tolls voluntary departure period under 8 USCS § 1229c; such conclusion best effectuates Congress's purpose in enacting

voluntary departure and motion to reopen/reconsider provisions and follows long-standing principle of construing any lingering ambiguities in deportation statutes in favor of alien. *Barroso v. Gonzales, 429 F.3d 1195, 2005 U.S. App. LEXIS 24845 (9th Cir. 2005)*.

BIA erred in determining that *8 CFR § 1003.2(d)* barred alien's *8 USCS § 1229* motion to reopen removal order that was issued pursuant to *8 USCS § 1182(a)(2)(A)(i)(II)*, (a)(6)(A)(i) because alien was entitled to reopen deportation proceeding because his cultivation conviction under *Cal. Health & Safety Code § 11358*, which was "key part" of deportation proceeding, had been vacated; remand to BIA was necessary because issue of whether alien's conviction was vacated on merits or because of immigration consequences had to be determined in first instance by BIA. *Cardoso-Tlaseca v. Gonzales, 460 F.3d 1102, 2006 U.S. App. LEXIS 21310 (9th Cir. 2006)*.

Appellate court denied alien's petition for judicial review of Board of Immigration Appeals' (BIA) denial of his motion to reopen under *8 USCS § 1229* where: (1) regardless of what legal missteps may have occurred earlier, conspicuous 14-month gap existed between denial of alien's first motion to reopen and filing of his second motion to reopen and alien failed to explain how his previous counsels' shortcomings caused failure to comply with temporal deadline; and (2) doctrine of equitable tolling was not available as means of rescuing party who failed to exercise due diligence, and alien waited approximately four years after missing his initial court date before he hired attorney and sat idly by for 14 months without seeking judicial review of BIA's denial of his motion to reopen. *Guerrero-Santana v. Gonzales, 499 F.3d 90, 2007 U.S. App. LEXIS 19602 (1st Cir. 2007)*.

For purposes of *8 USCS § 1229a(c)(3)(B)*, IJ properly relied on three documents in combination to determine that government satisfied its burden of proving by clear and convincing evidence that Indian citizen had been convicted of assault under *N.Y. Penal Law § 120.05*, which was crime of moral turpitude, thus making citizen removable under *8 USCS § 1182(a)(2)(A)(i)(I)*. *Singh v. United States Dep't of Homeland Sec., 517 F.3d 638, 2008 U.S. App. LEXIS 14277 (2d Cir. 2008)*.

Where government commenced removal proceedings against alien 10 years after he was convicted of aggravated criminal sexual contact, removal proceedings were not time-barred because, although *8 USCS § 1229* directed government to begin any removal proceedings as expeditiously as possible after date of conviction, it imposed no time limitation upon government action, and five-year statute of limitations in *28 USCS § 2462* did not apply to removal proceedings. *Restrepo v. AG of the United States, 617 F.3d 787, 2010 U.S. App. LEXIS 17091 (3d Cir. 2010)*.

Unpublished decision: Where immigration judge (IJ) determined that alien failed to show that his American citizen daughter would suffer exceptional and extremely unusual hardship—as defined in *8 USCS § 1229(b)(1)(D)*—if he were removed from United States, pursuant to *8 USCS § 1252(a)(2)(B)(1)*, appellate court lacked jurisdiction to review IJ's discretionary decision to deny alien's motion for cancellation of removal. *Yupanwqui v. Ashcroft, 115 Fed. Appx. 117, 2004 U.S. App. LEXIS 26353 (3d Cir. 2004)*.

Unpublished decision: Given greater procedural protections and thoroughness of investigation provided to asylum applicant in proceeding before immigration court, *8 USCS §§ 1229*, *1229a*, compared with interview with asylum officer, appellate court will not require immigration judge to give deference to any of asylum officer's initial determinations. *Shoukat v. AG of the United States, 151 Fed. Appx. 110, 2005 U.S. App. LEXIS 21471 (3d Cir. 2005)*.

Unpublished decision: BIA did not abuse its discretion when it denied alien's motion to reconsider BIA's order that affirmed immigration judge's denial of alien's application for asylum, withholding of removal, and relief under *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* because alien was in removal proceedings pursuant to *8 USCS § 1229* such that his filing of prior motion to reconsider necessarily precluded him from filing second motion to reconsider. *Jing Hui Jiang v. Gonzales, 161 Fed. Appx. 155, 2006 U.S. App. LEXIS 944 (2d Cir. 2006)*.

Unpublished decision: In his motion to reopen, alien explicitly stated that Matter of Lozada did not apply and exceptional circumstances arose from confusion rather than claim of ineffective assistance of counsel; immigration

judge, however, treated alien's motion as one claiming ineffective assistance of counsel rather than examining record to determine whether exceptional circumstances prevented alien from appearing at his hearing, which was abuse of discretion. *Feroglu v. Gonzales, 174 Fed. Appx. 590, 2006 U.S. App. LEXIS 8538 (2d Cir. 2006)*.

Unpublished decision: Alien had not shown that he was deprived of opportunity to obtain counsel, under *8 USCS § 1229(b)(1)*, in violation of his due process rights because alien admitted that he became aware of removal order two months before removal hearing, alien had been in contact with pro bono attorney, and although removal hearing commenced six days after calendar hearing, it was continued and alien did not obtain counsel during this time period. *Maringo v. Holder, 364 Fed. Appx. 903, 2010 U.S. App. LEXIS 2622 (5th Cir. 2010)*.

Unpublished decision: Alien's due process rights were not violated since: (1) he was given notice and opportunity to be heard of master calendar hearing; (2) he appeared at hearing, and was given opportunity to testify and to present evidence on his behalf; (3) hearing notice was timely as he was advised at hearing of rights to counsel, to present witnesses, and to present evidence, and he refused IJ's offer of more time to gather witnesses or evidence or to speak with family or attorney; (4) he told IJ that he was prepared to proceed; and (5) he admitted that he failed to attend college after December 2011, which was charged basis for removal. *Touray v. United States AG, 546 Fed. Appx. 907, 2013 U.S. App. LEXIS 24172 (11th Cir. 2013)*.

Unpublished decision: Petitioner failed to show due process violations because although judge initially erred in placing burden on government, judge corrected error and provided petitioner opportunity to respond, and petitioner's failure to provide any evidence or argument to meet her burden was not due process violation by judge. *Bugajska v. Lynch, 652 Fed. Appx. 568, 2016 U.S. App. LEXIS 11103 (9th Cir. 2016)*.

Transitional provision in the Illegal Immigration Reform and Immigrant Act does not clearly show that the statute is jurisdictional; Congress did not clearly make a statement that it intended to restrict immigration judges' jurisdiction in the statute, which says nothing about jurisdiction or an immigration judge's power to act, and the language of a separate transitional provision couldn't provide the clear statement necessary to render § 1229 jurisdictional. *United States v. Lira-Ramirez, 951 F.3d 1258, 2020 U.S. App. LEXIS 7070 (10th Cir.)*, cert. denied, *141 S. Ct. 830, 208 L. Ed. 2d 407, 2020 U.S. LEXIS 5479 (2020)*.

Although alien raised ineffective assistance of counsel claim, his motion to reopen was not subject to equitable tolling and was subject to denial due to untimeliness, where alien was aware of representation provided by his prior counsel before Board of Immigration Appeals, but waited more than 6 months to file his motion. *In re: Hector Jaime Ovalle-Reyes, 2010 Immig. Rptr. LEXIS 3506 (BIA & AAU Non-Precedent Decisions, Feb. 3, 2010)*.

Although *8 USCS § 1229(d)(1)* contemplates that removal proceedings shall be commenced as expeditiously as possible after entry of conviction which makes alien deportable, aliens do not have substantive or procedural right to "speedy removal proceedings" enforceable against Government, and there was no merit to alien's contention that DHS should have been enjoined from seeking to remove him for criminal conviction that occurred more than 10 years earlier. In re: Gordon Ndubisi Okoli (BIA & AAU Non-Precedent Decisions, Jan. 28, 2010).

II. NOTICE

9. Generally

As written, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 allows government to invoke stop-time rule only if it furnishes alien with single complaint document explaining what it intends to do and when. *Niz-Chavez v. Garland, 593 U.S. 155, 141 S. Ct. 1474, 209 L. Ed. 2d 433, 28 Fla. L. Weekly Fed. S. 764, 2021 U.S. LEXIS 2232 (2021)*, remanded, *2021 U.S. App. LEXIS 19916 (6th Cir. July 2, 2021)*.

Notice to alien at most recent address provided by alien is sufficient notice to appear for removal proceedings. *Dominguez v. United States Ag, 284 F.3d 1258, 15 Fla. L. Weekly Fed. C 349, 2002 U.S. App. LEXIS 3675 (11th Cir. 2002)*.

Invocation of presumption of notice requires Immigration and Naturalization Service to prove that notice (1) was properly addressed, (2) had sufficient postage, and (3) was properly deposited in mails; notice which fails to include proper zip code is not properly addressed. *Busquets-Ivars v. Ashcroft, 333 F.3d 1008, 2003 Cal. Daily Op. Service 5473, 2003 D.A.R. 6924, 62 Fed. R. Evid. Serv. (CBC) 717, 2003 U.S. App. LEXIS 12739 (9th Cir. 2003)*.

Immigration and Nationality Act simply requires that alien be provided written notice of his hearing; it does not require that notice to appear served on immigrant satisfy all of *8 USCS § 1229(a)(1)*'s notice requirements. *Haider v. Gonzales, 438 F.3d 902, 2006 U.S. App. LEXIS 4928 (8th Cir. 2006)*, reh'g denied, reh'g, en banc, denied, *2006 U.S. App. LEXIS 12076 (8th Cir. May 16, 2006)*.

An alien waived any challenge to notice to appear under *8 USCS §§ 1229(a)* and *1182* because she appeared at her initial removal hearing before immigration judge, failed to object to notice at hearing, and pleaded to charges contained in notice. *Chambers v. Mukasey, 520 F.3d 445, 2008 U.S. App. LEXIS 5020 (5th Cir. 2008)*.

Before alien departed United States he received notice to appear, which initiated removal proceedings; because alien left United States after initiation of removal proceedings, IJ lacked jurisdiction to hear alien's motion to reopen proceedings under departure bar, even though deportation order was entered after alien left country. *Toora v. Holder, 603 F.3d 282, 2010 U.S. App. LEXIS 7291 (5th Cir. 2010)*.

Section 239(a)(1) of Immigration and Nationality Act (INA), *8 USCS § 1229(a)(1)*, may be satisfied by combination of notices and, once notice complying with INA § 239(a)(1) is provided, stop-time rule of INA § 240A(d)(1)(A), *8 USCS § 1229b(d)(1)(A)*, is triggered, notwithstanding any defects in subsequent notices under INA § 239(a)(2), *8 USCS § 1229(a)(2)*. *Guamanrrigra v. Holder, 670 F.3d 404, 2012 U.S. App. LEXIS 3878 (2d Cir. 2012)*.

Third Circuit holds that notice to appear (NTA) is effective, for purposes of "stop-time" rule, only when it includes each of items that Congress instructs shall be given in person to alien; initial NTA that fails to satisfy statute's various requirements will not stop continuous residency clock until combination of notices, properly served on alien charged as removable, conveys complete set of information prescribed by statute within alien's first ten years of continuous residence. *Orozco-Velasquez v. AG United States, 817 F.3d 78, 2016 U.S. App. LEXIS 4569 (3d Cir. 2016)*.

Unpublished decision: BIA applied wrong legal standard in reviewing claim in motion to reopen in absentia removal that alien did not receive notice; inquiry should have focused on actual receipt of notice and not on *8 USCS §§ 1229(a)(2)* and *1229a(b)(5)(A)*, which applied to initiation and conduct of removal proceedings and focused on correct procedure for mailing notice. *Callin v. Holder, 333 Fed. Appx. 926, 2009 FED App. 0391N, 2009 U.S. App. LEXIS 11703 (6th Cir. 2009)*.

Written communications to noncitizen in multiple components or installments may collectively provide all information necessary to constitute "a notice to appear" under *8 U.S.C.S. § 1229b*; thus, government triggers stop-time rule when it sends noncitizen all required categories of information through one or multiple written communications. *Garcia-Romo v. Barr, 940 F.3d 192, 2019 FED App. 255P, 2019 U.S. App. LEXIS 29891 (6th Cir. 2019)*, reh'g denied en banc *2020 U.S. App. LEXIS 1934 (6th Cir. Jan. 22, 2020)*, vacated, remanded, *141 S. Ct. 2590, 209 L. Ed. 2d 729, 2021 U.S. LEXIS 2286 (2021)*.

While noncitizen receives "a notice to appear" only after she or he has received all required information listed in this statute, it does not follow that all criteria listed must be contained in single document. *Garcia-Romo v. Barr, 940 F.3d 192, 2019 FED App. 255P, 2019 U.S. App. LEXIS 29891 (6th Cir. 2019)*, reh'g denied en banc *2020 U.S. App. LEXIS 1934 (6th Cir. Jan. 22, 2020)*, vacated, remanded, *141 S. Ct. 2590, 209 L. Ed. 2d 729, 2021 U.S. LEXIS 2286 (2021)*.

10. Form or contents of notice

Because aliens in each these consolidated cases received proper notice under 8 USCS § 1229(a)(2) for hearings they missed and at which they were ordered removed, they could not seek rescission of their in absentia removal orders on basis of defective notice under 8 USCS § 1229a(b)(5)(C)(ii). *Campos-Chaves v. Garland, 602 U.S. 447, 144 S. Ct. 1637, 219 L. Ed. 2d 179, 30 Fla. L. Weekly Fed. S. 282, 2024 U.S. LEXIS 2608 (2024)*.

To rescind in absentia removal order on ground that alien did not receive notice in accordance with 8 USCS § 1229(a)(1) or (2), alien must show that he did not receive notice under either paragraph for hearing at which alien was absent and ordered removed. *Campos-Chaves v. Garland, 602 U.S. 447, 144 S. Ct. 1637, 219 L. Ed. 2d 179, 30 Fla. L. Weekly Fed. S. 282, 2024 U.S. LEXIS 2608 (2024)*.

On any reading, 8 USCS § 1229a(b)(5)(A) does not require both notice under 8 USCS § 1229(a)(1) or (2) before alien can be removed in absentia; it requires only one. *Campos-Chaves v. Garland, 602 U.S. 447, 144 S. Ct. 1637, 219 L. Ed. 2d 179, 30 Fla. L. Weekly Fed. S. 282, 2024 U.S. LEXIS 2608 (2024)*.

Use of name stamp, in lieu of original signature on certificate of service for notice of hearing under 8 USCS § 1229(a), did not render notice of hearing ineffective as to alien who failed to appear for hearing on his asylum petition. *Gurung v. Ashcroft, 371 F.3d 718, 2004 U.S. App. LEXIS 10840 (10th Cir. 2004)*.

Seventh Circuit agrees with Eighth Circuit that even if notice to appear (NTA) does not meet 8 USCS § 1229(a)(1) requirements, because it does not notify alien of time and date when initial immigration hearing will be held, § 1229(a)(1) requirements will be met if NTA is followed up with immigration court-issued hearing notice containing such information; section 1229(a) simply requires than alien be provided written notice of his or hearing; it does not require that NTA itself satisfy all of § 1229(a)(1) notice requirements. *Dababneh v. Gonzales, 471 F.3d 806, 2006 U.S. App. LEXIS 31143 (7th Cir. 2006)*.

Although signature and title of issuing official on alien's Notice to Appear were not legible, IJ properly denied alien's motion to terminate removal proceedings because alleged defect did not deprive Immigration Court of jurisdiction; further, alien did not show that alleged defect was contrary to regulation designed to benefit her, and she did not show that she was prejudiced by alleged defect because she received all information required by 8 USCS § 1229(a)(1)(A)–(D). *Kohli v. Gonzales, 473 F.3d 1061, 2007 U.S. App. LEXIS 918 (9th Cir. 2007)*.

Alien was ineligible for relief in form of cancellation of removal and adjustment of status because he failed to demonstrate that he was physically present in United States for continuous period of not less than 10 years immediately preceding date of his application for relief because (1) statutory notice requirements were satisfied because notice to appear, which ordered alien to appear before IJ at date and time "to be set," and follow-up hearing notice, which stated time and place of hearing, together, provided specific notice required by § 239(a)(1) of Immigration and Nationality Act (INA), 8 USCS § 1229(a)(1); (2) alien's accrual of time of continuous presence in United States was terminated, pursuant to stop-time rule of INA § 240A(d)(1), 8 USCS § 1229b(d)(1), more than five years before he would have been eligible for cancellation of removal under INA § 240A(b)(1), 8 USCS § 1229b(b)(1), because service of notice of hearing perfected notice required by INA § 239(a)(1); and (3) fact that service of subsequent notice of hearing may have been inadequate had no bearing on triggering of stop-time rule. *Guamanrrigra v. Holder, 670 F.3d 404, 2012 U.S. App. LEXIS 3878 (2d Cir. 2012)*.

Unpublished decision: Immigration judge did not abuse his discretion under 8 USCS § 1229a(b)(5)(D) in denying alien's request to reopen removal proceedings against him when alien failed to appear at his removal hearing and in absentia removal order was entered under 8 USCS § 1229a(5)(A); although inaccurate notice of hearing date

addressed to another person had been given to alien nearly year before hearing, error had been promptly discovered by immigration court and correct notice mailed to alien's counsel pursuant to 8 USCS § 1229(a)(1), (2); in addition, alien had been orally told correct hearing date, and alien did not file affidavit stating that he had not received notice of hearing date. Sandhu v. Gonzales, 185 Fed. Appx. 4, 2006 U.S. App. LEXIS 15714 (1st Cir. 2006).

Unpublished decision: When alien alleged that notice to appear (NTA) was defective based on illegible signature and doubt as to official title, those alleged defects did not violate any statutory or regulatory requirement; accordingly, alien's rights were not affected, and filing of NTA established immigration court's jurisdiction. Nascimento v. Gonzales, 247 Fed. Appx. 69, 2007 U.S. App. LEXIS 21054 (9th Cir. 2007).

Unpublished decision: When alien admitted to proper service of notice to appear (NTA), as required by 8 USCS § 1229(a)(1), admitted factual allegations contained in NTA, and conceded removability, she did not show that she was prejudiced by alleged illegible signature and doubt as to official title on NTA. Nascimento v. Gonzales, 247 Fed. Appx. 69, 2007 U.S. App. LEXIS 21054 (9th Cir. 2007).

Unpublished decision: As there was no statutory or regulatory authority requiring that issuing officer's signature and title be present on Notice to Appear (NTA), 8 USCS § 1229(a)(1), illegibility of signature and title did not render it defective; it was unlikely that official who signed NTA was not authorized to do so, as decision to issue NTA was not limited to discretion of highly placed officers. Ochoa-Artega v. United States AG, 322 Fed. Appx. 768, 2009 U.S. App. LEXIS 7704 (11th Cir. 2009).

District court properly denied motions to dismiss indictments for illegal reentry because underlying removal proceedings were not fundamentally unfair where catching errors in deficient notices to appear would not have led to non-discretionary relief from removal, they could have obtained judicial review of any denial of motions to reopen or final removal orders, and defective notices to appear did not list restrictions on access to relief but merely failed to state all possible options. United States v. Hernandez-Perdomo, 948 F.3d 807, 2020 U.S. App. LEXIS 2018 (7th Cir. 2020).

BIA properly denied alien's motion to reopen removal proceedings because she could not demonstrate prima facie eligibility for cancellation of removal; stop-time rule was triggered when alien received notice of all information required under 8 U.S.C.S. § 1229(a)(1)(A)-1229(a)(1)(G), whether that took place in one or more communications, and therefore continuous presence ended when, after defective notice to appear, she was mailed subsequent notice of hearing with required information. Yanez-Pena v. Barr, 952 F.3d 239, 2020 U.S. App. LEXIS 6172 (5th Cir. 2020), vacated, remanded, *141 S. Ct. 2589, 209 L. Ed. 2d 727, 2021 U.S. LEXIS 2358 (2021)*.

Defendant was properly convicted of illegal reentering the United States because precedents foreclosed his challenge to the immigration judge's jurisdiction over the prior removal proceedings due to a defect in the notice to appear; because defendant identified no intervening change in the precedents, the court of appeals was bound by two of its precedential opinions, and under those opinions, the alleged defect in the notice to appear would not be jurisdictional. United States v. Lira-Ramirez, 951 F.3d 1258, 2020 U.S. App. LEXIS 7070 (10th Cir.), cert. denied, *141 S. Ct. 830, 208 L. Ed. 2d 407, 2020 U.S. LEXIS 5479 (2020)*.

Jurisdiction properly vested with Immigration Judge when Notice to Appear (NTA) was filed with court, and termination of proceedings was therefore improper, notwithstanding slight difference in Border Patrol agent's signature on certificate of service when comparing NTA served on court with that served on alien, where both certificates bore alien's signature and provided that he was personally served with NTA, and substance of both NTAs was identical and was in compliance with § 1229. In re: Silvia Yaneth Contreras-De Gonzalez, 2009 Immig. Rptr. LEXIS 1562 (BIA & AAU Non-Precedent Decisions, Sep. 15, 2009).

While it would have been preferable for Notice to Appear to have included allegation that offense of conviction was "committed" prior to date on which respondent sought admission, such allegation was fairly implied by charge that respondent was inadmissible under 8 USCS § 1182(a)(2)(A)(i)(II) on account of drug offense, and it was error for Immigration Judge to terminate proceedings, where respondent had pled nolo contendere to drug charge, but

conviction had been deferred until after respondent's return to U.S. following brief visit to Mexico. In re: Sergio Chavez Murillo, 2010 Immig. Rptr. LEXIS 4235 (BIA & AAU Non-Precedent Decisions, Sep. 23, 2010).

11. —Date, time and place

Putative notice to appear that fails to designate specific time or place of noncitizen's removal proceedings is not "notice to appear" under 8 USCS § 1229, and so does not trigger stop-time rule for determining eligibility for cancellation of removal; based on plain text of statute, it is clear that to trigger stop-time rule, Government must serve notice to appear that, at very least, specifies time and place of removal proceedings. Pereira v. Sessions, 585 U.S. 198, 138 S. Ct. 2105, 201 L. Ed. 2d 433, 27 Fla. L. Weekly Fed. S 406, 2018 U.S. LEXIS 3838 (2018), limited, Khan v. Barr, 804 Fed. Appx. 268, 2020 U.S. App. LEXIS 15027 (5th Cir. 2020).

Taken together, notice to appear (NTA) and immigration court-issued hearing notice provided alien with notice required under 8 USCS § 1229(a)(1); even if NTA was procedurally defective, because it did not inform alien of specific time and date for his removal hearing, he was not prejudiced by defect because hearing notice informed him of specific time, date, and place of hearing, alien appeared at hearing, and he was thereafter given continuance so that he could hire attorney and put together defense. Dababneh v. Gonzales, 471 F.3d 806, 2006 U.S. App. LEXIS 31143 (7th Cir. 2006).

Where alien was ordered removed in absentia, alien's motion to reopen was properly denied because, inter alia, two-step notification process did not violate 8 USCS § 1229(a)(1)(G)(i) since Notice to Appear and hearing notice combined provided alien with time and place of hearing. Popa v. Holder, 571 F.3d 890, 2009 U.S. App. LEXIS 14590 (9th Cir. 2009).

Notice to Appear that does not include date and time of alien's deportation hearing, but that states that date and time will be set later, is not defective so long as notice of hearing is in fact later sent to alien. Popa v. Holder, 571 F.3d 890, 2009 U.S. App. LEXIS 14590 (9th Cir. 2009).

Unpublished decision: Although 8 USCS § 1229(a)(1)(G)(1) provided that written notice of removal proceedings was required to include, among other things, time and place proceedings were to be held, alien whose final notice to appear did not include those items was barred from arguing on appeal that immigration judge lacked jurisdiction to find him removable because he did not contest removability. Ali v. Gonzales, 200 Fed. Appx. 294, 2006 U.S. App. LEXIS 23269 (5th Cir. 2006).

Unpublished decision: Where alien asserted that Notice to Appear (NTA) was insufficient because it did not specify time and place at which proceedings would be held, as required by 8 USCS § 1229(a)(1)(G)(i), that argument was rejected since day after NTA was issued, he received Notice of Hearing, which indicated date and time of hearing and alien appeared and testified at hearing; therefore, he had actual notice, and he was not prejudiced by omission of time and date on NTA. Mehdi v. Gonzales, 216 Fed. Appx. 412, 2007 U.S. App. LEXIS 2584 (5th Cir. 2007).

Unpublished decision: Alien's petition for review was denied in case in which alien alleged that (1) Notice to Appear (NTA) did not state date and time of hearing, contrary to 8 USCS § 1229(a)(1)(G)(i), (2) when served with NTA, he was not furnished quarterly updated list of sources for free legal services as required by 8 USCS § 1229(a)(1)(E)(ii) and 1229(b)(2), and (3) he was not advised of his right to contact any consul or officials contrary to Geneva Convention; alien's due process claims failed since he did not show any prejudice. Maredia v. Gonzales, 232 Fed. Appx. 413, 2007 U.S. App. LEXIS 10852 (5th Cir. 2007).

Unpublished decision: Petitioner alien argued unsuccessfully that rescission of in absentia order of removal was required because he had not received notice in accordance with 8 USCS § 1229(a) which required personal service of written notice to appear when "practicable" with regard to, among other things, time and place of removal proceeding; court agreed with government that alien failed to exhaust issue and that court lacked jurisdiction to review issue; before BIA, alien had argued that his counsel was ineffective for failing to adequately provide him

notice, not that immigration court provided him deficient notice. *Oseiwusu v. Filip, 309 Fed. Appx. 253, 2009 U.S. App. LEXIS 1724 (10th Cir. 2009)*.

Unpublished decision: BIA properly affirmed IJ's denial of alien's motion to reopen removal proceedings to rescind in absentia order of removal based upon inadequate notice under *8 USCS § 1229a(b)(5)(C)(ii)*; notice to appear (NTA), which was personally served on alien and informed him that more information would be forthcoming, was not defective for failing to specify date and time of his removal hearing because NTA combined with subsequent notice of hearing, which was returned to Immigration Court as undeliverable, satisfied notice requirement of *8 USCS § 1229(a)(1)*. *Mota-Roman v. Holder, 331 Fed. Appx. 379, 2009 FED App. 0404N, 2009 U.S. App. LEXIS 12044 (6th Cir. 2009)*.

Unpublished decision: Because 2008 Form I-261 did not contain time and place at which proceedings would be held, it could not qualify as notice to appear under *8 USCS §§ 1229(a)* or *1229c*. *Sagastume v. Holder, 490 Fed. Appx. 712, 2012 FED App. 0791N, 2012 U.S. App. LEXIS 14994 (6th Cir. 2012)*.

U.S. Court of Appeals for Seventh Circuit holds, as have Second, Sixth, and Ninth Circuits, that Immigration Court's jurisdiction is secure despite omission in Notice to Appear of time-and-place information; accordingly, even though DHS did not provide Mexican alien with Notice to Appear that provided hearing time and date, alien was not entitled to relief because it was failure to follow claim-processing rule, not jurisdictional flaw, alien did not timely object, and he failed to show prejudice. *Ortiz-Santiago v. Barr, 924 F.3d 956, 2019 U.S. App. LEXIS 14860 (7th Cir. 2019)*, reh'g denied, *2019 U.S. App. LEXIS 21358 (7th Cir. July 18, 2019)*.

Notice to appear (NTA) that was served on alien without specification of time and place of initial hearing was sufficient to confer subject-matter jurisdiction on immigration court in removal proceedings, and *8 C.F.R. §§ 1003.14(a)*, *1003.13*, *1003.15*, and *1003.18(b)*, setting forth requirements for charging documents, jurisdiction, and NTAs, were not in conflict either with *8 U.S.C.S. § 1229(a)* or with U.S. Supreme Court's decision in Pereira v. Sessions. *Pontes v. Barr, 938 F.3d 1, 2019 U.S. App. LEXIS 26892 (1st Cir. 2019)*.

Petitioner's initial notice to appear (NTA) did not contain his hearing time and date, so BIA's dismissal of his challenge to denial of his motion to reopen removal proceedings and rescission of his in absentia removal was legally erroneous. Under Niz-Chavez, subsequent notices could not cure defects in initial NTA. *Rodriguez v. Garland, 15 F.4th 351, 2021 U.S. App. LEXIS 29186 (5th Cir. 2021)*, reh'g denied en banc *31 F.4th 935, 2022 U.S. App. LEXIS 10608 (5th Cir. 2022)*.

Government was unambiguously required to provide petitioner with Notice to Appear as single document that included all information set forth in *8 U.S.C.S. § 1229(a)(1)*, including time and date of removal proceedings. Because the government did not provide him with statutorily compliant notice before his removal hearing, his in absentia removal order was subject to recission pursuant to *8 U.S.C.S. § 1229a(b)(5)(C)(ii)*. *Singh v. Garland, 24 F.4th 1315, 2022 U.S. App. LEXIS 3207 (9th Cir. 2022)*, reh'g denied en banc *51 F.4th 371, 2022 U.S. App. LEXIS 28352 (9th Cir. 2022)*, cert. granted, *143 S. Ct. 2688, 216 L. Ed. 2d 1255, 2023 U.S. LEXIS 2795 (2023)*, vacated, remanded, *602 U.S. 447, 144 S. Ct. 1637, 219 L. Ed. 2d 179, 30 Fla. L. Weekly Fed. S. 282, 2024 U.S. LEXIS 2608 (2024)*, remanded, *117 F.4th 1145, 2024 U.S. App. LEXIS 23562 (9th Cir. 2024)*.

Notice of hearing gave petitioner sufficient notice where the government had mailed a notice of hearing that included the date and time for the hearing that petitioner had missed and at which he was ordered removed, thus providing *8 U.S.C.S. § 1229(a)(2)* notice. *Luna v. Garland, 2024 U.S. App. LEXIS 31986 (5th Cir. Dec. 17, 2024)*.

Notice to appear was not defective under *8 USCS § 1229(a)(1)(G)* although, rather than setting forth time and place at which proceedings were to be held, it reflected that time and place of proceeding would be set at later date. In re: Mohammad Jamali, File: *A096-024-560, 2009 Immig. Rptr. LEXIS 795 (BIA & AAU Non-Precedent Decisions, July 7, 2009)*.

Notice to Appear was not defective for purposes of 8 USCS § 1229(a)(l)(G)(i) where, rather that indicating specific time and date for hearing, it indicated that date and time of hearing were "to be set." In re: Ever Enehemias Quintanilla-Deras, 2009 Immig. Rptr. LEXIS 2248 (BIA & AAU Non-Precedent Decisions, July 13, 2009).

With respect to alien's contention that Notice to Appear was defective because it lacked date and time of hearing, postponing designation of precise time and date of initial hearing in Immigration Court until removal proceedings are commenced does not violate alien's procedural protections so long as alien receives notice of hearing pursuant to 8 USCS § 1229(a)(2)(A). In re: Heberto Bojorouez-Sanchez, 2010 Immig. Rptr. LEXIS 4113 (BIA & AAU Non-Precedent Decisions, Aug. 11, 2010).

12. —Grounds or description of violation

Immigration Judge may rule on any ground of inadmissibility that arises during course of proceedings, including such grounds that are not included in charging document. Matovski v. Gonzales, 492 F.3d 722, 2007 FED App. 0219P, 2007 U.S. App. LEXIS 14020 (6th Cir. 2007).

Although notice to appear failed fully to specify statutory provisions alleged to be violated, 8 USCS § 1229(a)(1)(D), by not including any aggravated felony subsections of 8 USCS § 1101(a)(43), Immigration Court did not lack jurisdiction as result; alien's charging document satisfied, albeit minimally, 8 USCS § 1229(a)(1)(D)'s requirements by specifying that alien was removable as aggravated felon pursuant to identified provisions of Immigration and Nationality Act, as well as his underlying criminal conviction. Lazaro v. Mukasey, 527 F.3d 977, 2008 U.S. App. LEXIS 11833 (9th Cir. 2008).

Unpublished decision: Alien was not denied due process because notice to appear adequately described allegations and charge against him, as required by 8 USCS § 1229(a)(1)(C), (D). Chapling v. Mukasey, 267 Fed. Appx. 516, 2008 U.S. App. LEXIS 3882 (9th Cir. 2008).

Unpublished decision: Failure of any charging document to mention alien's prior crimes did not violate 8 USCS § 1229(a)(1) as there was no dispute that alien did receive written notice of charges of removability against him and facts government relied upon to support those charges, and alien's prior crimes were not relied on by BIA as supporting charge of removability, but instead, BIA relied on those crimes in arriving at its conclusion that alien was statutorily ineligible for cancellation of removal under 8 USCS § 1229b; there was nothing in 8 USCS § 1229(a)(1) that required notice to appear or any other charging document to list all facts that might be detrimental to alien's application for discretionary relief from removal. Jurado-Delgado v. AG of the United States, 498 Fed. Appx. 107, 2009 U.S. App. LEXIS 742 (3d Cir. 2009).

13. —Language used

Where alien had appeared at hearing after receiving written notice in English but failed to appear at new hearing after receiving similar notice, INS did not violate alien's due process rights by failing to provide notice in alien's native language where alien had actual notice and was personally served with notice at hearing. Khan v. Ashcroft, 374 F.3d 825, 2004 U.S. App. LEXIS 13731 (9th Cir. 2004).

Alien's claim that notices to appear were defective because they did not advise him in his native Portuguese that in absentia order could be entered against him if he failed to appear was rejected as relevant statute, 8 USCS § 1229(a)(1)(G), did not require that notice be provided in any particular language. Silva-Carvalho Lopes v. Gonzales, 468 F.3d 81, 2006 U.S. App. LEXIS 27241 (2d Cir. 2006), app. after remand, remanded, 517 F.3d 156, 2008 U.S. App. LEXIS 3624 (2d Cir. 2008).

Unpublished decision: Alien argument that he was entitled to have removal proceedings reopened and in absentia order rescinded because there was objective evidence he did not receive notice of hearing date failed; alien was given oral notice, in Bulgarian language, that he was required to provide address and of consequences of failing to

do so; alien did not dispute that he failed to provide specific contact address. *Todorov v. Gonzales, 161 Fed. Appx. 353, 2005 U.S. App. LEXIS 28475 (5th Cir. 2005)*.

Unpublished decision: BIA properly found that alien received adequate notice of charges against him, as was required by *8 USCS § 1229(a)(1)*, because all of copies of notice that appeared in record, including two attached to alien's motion to terminate, contained same two charges, and, even though it was not clear why oral notice in one's native language would have been required, each certificate of service said that alien was given oral notice in "Spanish/English." *Segura-Felipe v. Holder, 384 Fed. Appx. 519, 2010 U.S. App. LEXIS 16914 (7th Cir. 2010)*.

14. Delay in delivery

Unreasonable delay constituted exceptional circumstances beyond alien's control justifying his failure to appear at hearing, where more than 5 years elapsed between personal service of notice to appear and subsequent delivery of hearing notice by regular mail to address initially set forth on notice to appear. In re: Mohammad Jamali, File: *A096-024-560, 2009 Immig. Rptr. LEXIS 795 (BIA & AAU Non-Precedent Decisions, July 7, 2009)*.

15. Non-receipt of notice

When issue is not notice but receipt—because *8 USCS § 1229a* allows alien ordered removed in absentia proceeding to reopen proceeding if he did not receive notice even if notice that was sent, whether or not it was received, satisfied statutory and constitutional requirements—intended recipient's affidavit of nonreceipt is evidence. *Joshi v. Ashcroft, 389 F.3d 732, 2004 U.S. App. LEXIS 24176 (7th Cir. 2004)*.

Although immigration judge (IJ) properly entered initial in absentia order of removal based on attempted service under *8 USCS § 1229(c)*, IJ should have granted alien's motion to reopen, under *8 USCS § 1229a(b)(5)*, in face of conclusive proof that he did not receive notice and that there was no basis in record to show that alien thwarted delivery of notice. *Sabir v. Gonzales, 421 F.3d 456, 2005 U.S. App. LEXIS 18417 (7th Cir. 2005)*.

Alien, citizen of Rwanda and native of Democratic Republic of Congo, was granted review of decision denying her motion to reopen removal proceedings because immigration judge erroneously applied delivery presumption, and standard for rebutting this presumption, for certified mail, under previous version of this law, rather than for regular mail, under amended version of this law, and alien proffered sufficient evidence that she did not receive notice of hearing to warrant consideration of whether she could rebut presumption of regular mail delivery since she averred that, although she was at mailing address most of time because she did not have job, she did not receive notice of removal hearing, and her roommates also asserted that they did not receive this letter for her in mail. *Nibagwire v. Gonzales, 450 F.3d 153, 2006 U.S. App. LEXIS 14415 (4th Cir. 2006)*.

Unpublished decision: BIA properly denied alien's motion to reopen removal order entered in absentia under *8 USCS § 1229a(b)(5)(C)* because although alien claimed that she never received notice informing her of hearing date, only evidence she offered in support of non-receipt was her own affidavit, which was insufficient proof of nonreceipt. 2009 U.S. App. LEXIS 12782.

Unpublished decision: Alien was not entitled to rescission under *8 USCS § 1229a(b)(5)(C)(ii)* of removal order that was entered in absentia, as record did not support alien's claim of lack of notice; notice to appear was personally served, and hearing notice was served by mail to alien's last known address in compliance with *8 USCS § 1229(c)*. *Carrasco-Potes v. AG of the United States, 206 Fed. Appx. 226, 2006 U.S. App. LEXIS 29007 (3d Cir. 2006)*.

Unpublished decision: BIA's denial of alien's motion to reopen her removal order entered in absentia under *8 USCS § 1229a(b)(5)(A)* was vacated because IJ did not indicate that he had considered alien's evidence of non-receipt of notice to appear, which evidence included affidavits of alien and her attorney and actions taken by alien to ensure that her case was heard; case was remanded so that IJ could apply less stringent presumption regarding notices

sent via regular mail under 8 USCS § 1229(a)(1) to evidence that alien produced. Bruli v. AG of the United States, 263 Fed. Appx. 239, 2008 U.S. App. LEXIS 2735 (3d Cir. 2008).

Unpublished decision: BIA properly declined to rescind alien's removal order under 8 USCS § 1229a(b)(5)(C) because although alien claimed that she never received notice informing her of hearing date under 8 USCS § 1229(a)(2)(A), only evidence she offered in support of non-receipt was her own affidavit, which was insufficient proof of nonreceipt, and further, alien received other documents from Department of Homeland Security addressed to her at her uncle's address, both before and after letter informing her of her hearing date. Cisneros-Cornejo v. Holder, 330 Fed. Appx. 616, 2009 U.S. App. LEXIS 12261 (7th Cir. 2009).

Unpublished decision: BIA abused its discretion in denying alien's motion to reopen proceedings in which he was ordered removed in absentia under 8 USCS §§ 1229 and 1229a; Board should have focused on whether alien actually received notice and whether, considering all relevant evidence, he overcame presumption of delivery that arose from mailed hearing notice. Stewart v. Holder, 362 Fed. Appx. 518, 2010 FED App. 0053N, 2010 U.S. App. LEXIS 1807 (6th Cir. 2010).

Unpublished decision: Because BIA considered reasonableness of mailing of hearing notices, rather than fact of their receipt, denial of petitioner alien's motion to reopen had to be remanded for further consideration. Turner v. Holder, 455 Fed. Appx. 76, 2012 U.S. App. LEXIS 872 (2d Cir. 2012).

16. —Presumption of delivery or receipt

Immigration Judge (IJ) did not abuse discretion in denying petitioner's motion to reopen removal proceedings after IJ entered order in absentia pursuant to 8 USCS § 1229a(b)(5)(A) removing petitioner to Nepal after he failed to appear at scheduled hearing on his application for asylum; notice of hearing met requirements of 8 USCS § 1229(a)(1), (2), and petitioner did not meet his burden under 8 USCS § 1229a(b)(5)(C)(ii) to show that he did not actually receive notice. Gurung v. Ashcroft, 371 F.3d 718, 2004 U.S. App. LEXIS 10840 (10th Cir. 2004).

Although in reviewing asylum applicant's motion to rescind in absentia order of removal, pursuant to 8 USCS § 1229a(b)(5)(C)(ii), immigration judge (IJ) properly recognized that presumption of receipt of notice of removal hearing applied to claims of nonreceipt of notice, IJ erred by not adequately explaining why applicant failed to rebut presumption of receipt. Alrefae v. Chertoff, 471 F.3d 353, 2006 U.S. App. LEXIS 30818 (2d Cir. 2006).

BIA erred in deciding that native of Indonesia, who had applied for asylum, did not overcome presumption of effective service in relation to notice of rescheduled hearing; alien presented sufficient evidence to overcome lesser presumption of effective service applicable to regular mail under 8 USCS § 1229(a) and, therefore, she demonstrated that she did not receive notice for purposes of rescinding in absentia removal order under 8 USCS § 1229a(b)(5)(C)(ii). Sembiring v. Gonzales, 499 F.3d 981, 2007 U.S. App. LEXIS 20211 (9th Cir. 2007).

Opinion of Board of Immigration Appeals (BIA) and Immigration Judge clearly indicated that they disregarded alien's affidavit because it was not accompanied by "substantial and probative evidence" standard to overcome presumption of proper delivery; because "substantial and probative" standard could not have been applied to notices sent by regular mail, BIA abused its discretion in denying alien's motion to reopen under 8 USCS § 1229a, and case was remanded for further consideration. Kozak v. Gonzales, 502 F.3d 34, 2007 U.S. App. LEXIS 22045 (1st Cir. 2007).

Brazilian alien was entitled to review of BIA's denial of his motion to reopen in absentia order of removal based on his claim that he did not receive notice to appear (NTA) under 8 USCS § 1229(a)(1) because BIA applied more stringent presumption of delivery to NTA than standard that had been explicitly approved in cases where notice was effectuated by regular mail. Silva-Carvalho Lopes v. Mukasey, 517 F.3d 156, 2008 U.S. App. LEXIS 3624 (2d Cir. 2008).

Unpublished decision: Joining other circuits that have addressed issue, Fifth Circuit distinguishes mailings involving regular mail from those involving certified mail in context of *8 USCS § 1229(a)(1)*, and under that statutory provision, only where mailing is through certified mail does strong presumption of effective service arise; where correspondence is sent by regular mail, and where there is no other evidence that petitioner was attempting to avoid proceedings, petitioner's statement that he or she did not receive correspondence is sufficient evidence that mail delivery failed. *Joan Jepkirui Settim v. Gonzales, 171 Fed. Appx. 436, 2006 U.S. App. LEXIS 6333 (5th Cir. 2006)*.

Unpublished decision: In case in which alien was ordered removed in absentia and his motion to reopen was denied, alien's petition was denied since written notice sent to address alien last provided under Immigration and Nationality Act § 239(a)(1)(F) constituted sufficient notice; BIA did not abuse its discretion by finding that proper notice was sent because it was sent to last address provided by alien after he had been advised of his address obligations, and there was no indication that BIA applied erroneous presumption as to service on alien. *Singh v. United States AG, 230 Fed. Appx. 928, 2007 U.S. App. LEXIS 11937 (11th Cir. 2007)*.

Unpublished decision: Alien's petition for review was granted because while BIA correctly applied weaker presumption that arose under *8 USCS § 1229(c)* when regular mail was used to send out removal hearing notice, The BIA abused its discretion by failing to consider all of evidence relevant to alien's claim for relief under *8 USCS § 1229a(b)(5)(C)*: (1) alien asked to have his removal hearing reopened on ground that he had never received hearing notice that was sent to his last known address; (2) presumption that notice was received by persons residing at that address was only factor that BIA had considered in denying alien's motion to reopen; (3) BIA should have considered fact that alien had extra incentive to appear at removal hearing because he had posted $5,000 bond, which he would lose if he did not appear; and (4) fact that alien had promptly and diligently obtained counsel and acted to reopen his case after he learned that in absentia removal order was issued against him was also significant factor that BIA should have considered in deciding whether or not to grant alien relief under § 1229a(b)(5)(C). *Patil v. AG of the United States, 326 Fed. Appx. 667, 2009 U.S. App. LEXIS 12425 (3d Cir. 2009)*.

Defective notice to appear per *8 U.S.C.S. § 1229(a)(2)(A)* did not render petitioner in absentia removal order invalid where the government had mailed him a notice of hearing that provided *8 U.S.C.S. § 1229(a)(2)* notice, the circumstances indicated delivery of that notice, such as the absence of a non-deliverable return and the lack of due diligence, and thus, petitioner had not rebutted the weaker presumption of delivery. *Luna v. Garland, 2024 U.S. App. LEXIS 31986 (5th Cir. Dec. 17, 2024)*.

El Salvadoran citizen who entered the U.S. illegally in 2003, failed to respond to a Notice of Hearing (NOH), and was removed in absentia was not entitled to reopen removal under *8 U.S.C.S. § 1229a(b)(5)(C)(ii)* on the basis that she did not receive the NOH; it was not returned, and she did not follow up on her immigration proceedings for over a decade. *Gonzalez-Diaz v. Barr, 766 Fed. Appx. 117, 2019 U.S. App. LEXIS 9779 (5th Cir. 2019)*.

Based on totality of evidence, respondent rebutted presumption that she was adequately notified of her removal hearing via regular mail, where respondent, who denied receiving Notice of Hearing, was lawful permanent resident having family ties to U.S., she filed her motion to reopen with due diligence, and she lacked motive to avoid hearing because doing so would result in loss of lawful permanent residence status. *In re: Miriam Loera-Aquino, 2010 Immig. Rptr. LEXIS 4789 (BIA & AAU Non-Precedent Decisions, Aug. 12, 2010)*.

Notwithstanding Immigration Judge's finding that alien failed to overcome slight presumption of delivery of notice for his removal hearing, alien was allowed another opportunity to appear in light of totality of circumstances including his diligence in filing motion to reopen proceedings following issuance of in absentia order, his submission of affidavit indicating he did not receive notice for his hearing, fact that he was beneficiary of approved I-140, absence of motive not to appear, and possible eligibility for other forms of relief including cancellation of removal. *In re: Jorge Ortiz-Salazar, 2010 Immig. Rptr. LEXIS 5071 (BIA & AAU Non-Precedent Decisions, Aug. 5, 2010)*.

17. —Constructive receipt

BIA did not abuse its discretion in denying asylum applicant's motion to rescind in absentia removal order pursuant to *8 USCS § 1229a(b)(5)(C)(ii)*; even if applicant rebutted presumption that notice was actually received, applicant was in constructive receipt of notice since he thwarted delivery by failing to provide address change, as required by *8 USCS § 1229(a)(1)(F)(ii)*. *Maghradze v. Gonzales, 462 F.3d 150, 2006 U.S. App. LEXIS 23772 (2d Cir. 2006)*.

Alien established lack of notice justifying rescission of in absentia removal order and reopening of proceedings, where notice to appear and notice of hearing were sent to her former address, which was most recent address provided to INS, and she could not be charged with actual or constructive notice notwithstanding her failure to provide INS with updated address. In re: Noknoi Yaibua Leza a.k.a. *Nokno Yaibua, 2010 Immig. Rptr. LEXIS 3356 (BIA & AAU Non-Precedent Decisions, Mar. 31, 2010)*.

18. —Failure to provide mailing address

Unpublished decision: *8 USCS § 1229a(b)(5)(B)* does not entirely eliminate government's statutory obligation to give notice of removal hearing to alien who has provided mailing address, but has not updated it; more reasonable interpretation of § 1229a(b)(5)(B) is that at removal hearing where alien is not in attendance and has provided no contact information under *8 USCS § 1229(a)(1)(F)*, then *8 USCS § 1229a(b)(5)(B)* absolves government of burden of establishing by clear, unequivocal, and convincing evidence that written notice was provided; to be sure, fact that § 1229a(b)(5)(A), by its reference to most recent address, particularizes which address it is indicating, whereas § 1229a(b)(5)(B) refers only to address, supports view that § 1229a(b)(5)(B) can only be invoked where alien has provided absolutely no address. *Perez-Alevante v. Gonzales, 197 Fed. Appx. 191, 2006 U.S. App. LEXIS 23785 (3d Cir. 2006)*.

Where alien did not provide United States address in accordance with Notice to Appear, Immigration Court was not required to send him notice of removal hearing, and there was no merit to alien's contention that he satisfied his obligation by providing his sister's phone number to DHS on issuance of *Notice to Appear. In re: Ever Enehemias Quintanilla-Deras, 2009 Immig. Rptr. LEXIS 2248 (BIA & AAU Non-Precedent Decisions, July 13, 2009)*.

Where record revealed that alien failed to provide address at which he could be contacted in accordance with *8 USCS § 1229(a)(1)(F)(i)* or written notice of any change of address, alien's assertion on appeal that he provided contact address was alone insufficient to demonstrate that he did, in fact, provide required address, and alien was precluded from reopening to apply for adjustment of status or other relief. *In re: Orlen Alexis Padilla-Banegas, 2010 Immig. Rptr. LEXIS 3508 (BIA & AAU Non-Precedent Decisions, Feb. 19, 2010)*.

19. —Change of address

BIA properly applied presumption of receipt because record established that notice to appear was accurately addressed and mailed according to normal office procedures, however BIA exceeded its discretion by failing to consider all circumstantial evidence that alien offered to rebut that presumption; BIA failed to consider three facts that might have weighed in favor of alien: first, by filing application for Alien Labor Certification in 2001, he initiated proceeding to obtain benefit, which made it less likely that he would simply ignore later immigration proceeding of which he had notice; second, by promptly providing INS with change of address after he posted bond, he has done something to illustrate that he was not absconder; lastly, alien disclosed order of removal when he filed Application to Register Permanent Resident or Adjust Status in April of 2005. *Silva-Carvalho Lopes v. Gonzales, 468 F.3d 81, 2006 U.S. App. LEXIS 27241 (2d Cir. 2006)*, app. after remand, remanded, *517 F.3d 156, 2008 U.S. App. LEXIS 3624 (2d Cir. 2008)*.

Alien was not entitled to recission of his removal order under *8 USCS § 1229a(b)(5)(C)* after proceedings in absentia because his failure to receive actual notice of time of his postponed hearing was result of his

noncompliance with his obligation to keep immigration court apprised of his current mailing address under 8 USCS § 1229(a). Gomez-Palacios v. Holder, 560 F.3d 354, 2009 U.S. App. LEXIS 3501 (5th Cir. 2009).

While asylum applicant's attempts to keep government apprised of her whereabouts were ineffective, they demonstrated her interest in pressing forward; therefore, she would be given chance to establish that she resided at particular address when notice of hearing was mailed to her and dismissal of her motion to reopen was reversed. Aminata Ibra Ba v. Holder, 561 F.3d 604, 2009 FED App. 0141P, 2009 U.S. App. LEXIS 7313 (6th Cir. 2009).

Unpublished decision: Even assuming arguendo that Form I-130 filed by petitioner's wife, naturalized U.S. citizen, could have been used to make required change-of-address notification, information in wife's form was insufficient to constitute notice of address change required by 8 USCS § 1229(a)(1)(F)(ii); thus, there was no basis to conclude that BIA abused its discretion in denying petitioner's motion to reopen after he was ordered removed in absentia pursuant to 8 USCS § 1229a(b)(5)(A) for failing to appear at hearing for which he was given notice, although it was not received because he failed to file proper change-of-address form. Youn Mun Hee v. United States AG, 2010 U.S. App. LEXIS 27150 (11th Cir. May 3, 2010), reh'g, en banc, denied, *408 Fed. Appx. 344, 2010 U.S. App. LEXIS 27363 (11th Cir. 2010)*, cert. denied, *563 U.S. 935, 131 S. Ct. 2093, 179 L. Ed. 2d 890, 2011 U.S. LEXIS 2988 (2011)*.

Unpublished decision: Alien could not claim that notice to appear was improper for failing to provide address of immigration court that would hear his removal proceedings where alien, after being personally served, failed to provide correct address to INS agents, and subsequent mailing to incorrect address contained requisite court address; accordingly, immigration judge properly denied alien's motion to rescind and reopen in absentia order for his removal. Dubovtsev v. Ashcroft, 118 Fed. Appx. 7, 2004 U.S. App. LEXIS 24015 (6th Cir. 2004).

Unpublished decision: Order of removal entered in absentia was reversed because alien did not receive notice to appear or notice and date of hearing even though alien, through counsel, promptly notified former Immigration and Naturalization Service of alien's correct address; alien did not have obligation to provide separate notice to immigration court; pursuant to 8 USCS § 1229a(b)(5)(C)(ii), motion to reopen can be filed at any time when alien shows that he did not receive proper notice as required by 8 USCS § 1229(a). Qumsieh v. Ashcroft, 134 Fed. Appx. 48, 2005 U.S. App. LEXIS 10390 (6th Cir. 2005).

Unpublished decision: Court of appeals found that federal government complied with its obligations under 8 USCS § 1229(a) when it notified alien that hearing would be held to determine if he should be removed from United States by sending notice to last address alien provided in writing, and that government acted lawfully under 8 USCS § 1229a(b)(5)(A) when it held hearing in absentia to determine if alien should be removed; court of appeals denied alien's petition seeking review of decision by Board of Immigration Appeals denying alien's motion to reopen hearing. Voloti v. United States AG, 134 Fed. Appx. 377, 2005 U.S. App. LEXIS 10888 (11th Cir. 2005).

Unpublished decision: Board of Immigration Appeals properly denied alien's motion to reopen after alien failed to attend his removal hearing because alien received required written notice of address requirement and consequences of noncompliance as required by Immigration and Nationality Act, 8 USCS § 1229(a)(1)(F), and if court were to construe alien's filing as motion to reopen solely to adjust his status, that motion would be barred as untimely under 8 C.F.R. § 1003.2(c)(2). Fernandes De Oliveira v. Gonzales, 150 Fed. Appx. 72, 2005 U.S. App. LEXIS 21716 (2d Cir. 2005).

Unpublished decision: Since evidence in record did not support alien's claim that she provided Immigration and Naturalization Service (INS) with written record of her change of address within meaning of 8 USCS § 1229(c) and record demonstrated that INS and Immigration Court sent Notice to Appear and hearing notice to most recent address provided by alien, alien's petition for review of Board of Immigration Appeals' affirmation without opinion of immigration judge's (IJ) denial of her motion to reopen in absentia removal proceedings was denied; IJ did not abuse its discretion by denying motion to reopen. McEnough-Watson v. United States AG, 156 Fed. Appx. 293, 2005 U.S. App. LEXIS 26519 (11th Cir. 2005), cert. dismissed, *549 U.S. 948, 127 S. Ct. 380, 166 L. Ed. 2d 266, 2006 U.S. LEXIS 7803 (2006)*.

Unpublished decision: Board of Immigration Appeals (BIA) did not abuse its discretion in denying alien's motions to reopen as untimely because alien provided no evidence to prove that he failed to receive BIA's dismissal of his appeal because pursuant to *8 USCS § 1229(c)*, service by mail was sufficient if there was proof of attempted delivery to last address provided by alien, and BIA sent alien its decision to dismiss his case at address he had provided when he filed his notice of appeal, and unlike his previous documents, BIA's dismissal was not returned by post office as undeliverable, so it was presumed to have arrived. *Osele v. United States AG, 190 Fed. Appx. 96, 2006 U.S. App. LEXIS 19949 (2d Cir. 2006)*.

Unpublished decision: IJ did not abuse his discretion in denying alien's motion to reopen removal proceedings conducted in absentia because hearing notice was mailed to alien's address of record, which was sufficient under *8 USCS § 1229(c)*, and alien presented no evidence that notice's return to immigration court was result of improper delivery by postal service. *Tjhai v. Mukasey, 271 Fed. Appx. 663, 2008 U.S. App. LEXIS 7291 (9th Cir. 2008)*.

Unpublished decision: In case in which alien could not show that he did not receive notice in accordance with *8 USCS § 1229(a)(1)* or (2) and alien was ordered removed in absentia, BIA did not abuse its discretion in dismissing alien's appeal of denial of his motion to reopen under *8 USCS § 1229a(b)(5)(C)*; alien had argued unsuccessfully that notice to appear should have been sent to Pennsylvania address, which was known to Department of Homeland Security through its use in his other immigration matters, instead of Georgia address he listed in his application for adjustment of status. *Belle v. United States AG, 297 Fed. Appx. 846, 2008 U.S. App. LEXIS 22244 (11th Cir. 2008)*.

Unpublished decision: In case in which, under *8 USCS §§ 1305(a)* and *1229*, alien's last known address for purposes of removal proceedings was his Georgia address and service by mailing notice to appear and notice of hearing to that last known address was statutorily authorized method of service and reasonably calculated to ensure proper notice, IJ was authorized to proceed in absentia and order his removal under *8 USCS § 1229a(b)(5)(A)* when alien failed to appear; alien had argued unsuccessfully that notice to appear should have been sent to Pennsylvania address, which was known to Department of Homeland Security through its use in his other immigration matters, instead of Georgia address he listed in his application for adjustment of status. *Belle v. United States AG, 297 Fed. Appx. 846, 2008 U.S. App. LEXIS 22244 (11th Cir. 2008)*.

Unpublished decision: BIA properly affirmed IJ's denial of alien's motion to reopen removal proceedings to rescind in absentia order of removal based upon inadequate notice under *8 USCS § 1229a(b)(5)(C)(ii)*; there was no due process violation under *U.S. Const. amend. V* because Immigration Court's method of service by first-class mail to alien's former address as contained in notice to appear complied with *8 USCS § 1229* and was reasonably calculated to ensure that alien received notice of his hearing. *Mota-Roman v. Holder, 331 Fed. Appx. 379, 2009 FED App. 0404N, 2009 U.S. App. LEXIS 12044 (6th Cir. 2009)*.

It was inappropriate to order alien's removal from United States in absentia under *8 USCS § 1229a(b)(5)(A)* where, although Notice to Appear was sent to her last known address, she stated that she did not live there when notice was mailed, and notice was returned as undeliverable, and where there was no indication that she was actually notified or could be charged with having been notified of particular statutory address obligations associated with removal proceedings and of consequences of failing to provide current address. *In re: Rosa De Leon, 2009 Immig. Rptr. LEXIS 1204 (BIA & AAU Non-Precedent Decisions, June 23, 2009)*.

Where Notice to Appear was served on alien on June 2, 2005, but was not filed with Immigration Court until August 23, 2005, remand was required to determine whether alien submitted address to Immigration Court between date of service and date of filing, as he claimed, or whether he failed to do so, such that removal proceedings could go forward without notice of hearing being sent to him. *In re: Jorge Luis Soto-Mayorga, 2010 Immig. Rptr. LEXIS 4936 (BIA & AAU Non-Precedent Decisions, Oct. 14, 2010)*.

20. — —New address not used

Alien's motion to re-open in absentia deportation order pursuant to 8 USCS § 1229a(b)(5)(C) was improperly denied where notices were sent to wrong address after alien's legal services personal representative sent letter notifying INS of alien's change of address; 8 CFR § 3.15(d)(2), which requires use of specific change of address form, is not reasonable interpretation of 8 USCS § 1229(a)(1)(F), which requires only written notice of change of address. Beltran v. INS, 332 F.3d 407, 2003 FED App. 0187P, 2003 U.S. App. LEXIS 11427 (6th Cir. 2003), reh'g denied, 2003 U.S. App. LEXIS 20069 (6th Cir. Sept. 18, 2003), app. after remand, remanded, 286 Fed. Appx. 914, 2008 FED App. 0404N, 2008 U.S. App. LEXIS 14601 (6th Cir. 2008).

U.S. BIA abused its discretion in refusing to set aside order of alien's removal in absentia pursuant to 8 USCS § 1229a(b)(5)(A), 8 CFR § 208.10 because alien's return receipts for change of address forms and documents alien received about his work authorization application showed that Department of Homeland Security failed to send notice to appear to most recent address provided by alien as required by 8 USCS § 1229(a), (c). Terezov v. Gonzales, 480 F.3d 558, 2007 U.S. App. LEXIS 5940 (7th Cir. 2007).

Notwithstanding concern over illegibility of alien's writing on change of address form, alien did not receive and could not be charged with having received proper notice of his removal hearing, where notice incorrectly listed his address as "Manam" instead of "Mahan" Road. In re: Fernando Alvarado Mendoza, 2010 Immig. Rptr. LEXIS 3422 (BIA & AAU Non-Precedent Decisions, Mar. 22, 2010).

Alien's motion to reopen proceedings in which he was ordered removed in absentia was properly granted, where Notice to Appear and notice of hearing were sent to address which had been submitted to DHS over 5 years earlier, and where record did not reflect that alien actually received Notice to Appear, which document set out requirement that alien notify Immigration Court in event of change of address during course of proceeding. In re: Hassan Traore, 2010 Immig. Rptr. LEXIS 5512 (BIA & AAU Non-Precedent Decisions, Nov. 10, 2010).

21. — —Failure to provide notice of change

Immigrant's motion to reopen removal proceedings was denied because in absentia removal order was not erroneously entered and due process was not violated where immigrant failed to give notice of address change; notice to appear and notice of hearing combined to give notice required under 8 USCS § 1229(a)(1). Haider v. Gonzales, 438 F.3d 902, 2006 U.S. App. LEXIS 4928 (8th Cir. 2006), reh'g denied, reh'g, en banc, denied, 2006 U.S. App. LEXIS 12076 (8th Cir. May 16, 2006).

Unpublished decision: BIA did not abuse its discretion when it denied alien's motion to reopen under 8 USCS § 1229a because administrative record reflected that notice of hearing was mailed to alien's former address, alien's claims that U.S. Attorney General's (AG) failure to send notice to his new address provided grounds to reopen his removal proceedings was without merit because alien's vague, self-serving claim that he entrusted change-of-address form to friend for mailing was not substantial and probative evidence demonstrating that nondelivery was not due to AG's failure to provide address where he could receive mail; moreover, written notice of change of address was required and any oral notice that alien may have given to IJ was insufficient to overcome presumption that he received notice of his removal hearing. Thongphilack v. Gonzales, 506 F.3d 1207, 2007 U.S. App. LEXIS 21831 (10th Cir. 2007).

Where alien was ordered removed in absentia, alien's motion to reopen was properly denied because, inter alia, (1) Notice to Appear (NTA) met requirements of 8 USCS § 1229(a)(1)(F)(ii) since NTA advised alien of alien's responsibility to update Immigration Court of any change in address, and (2) in absentia removal proceedings did not violate alien's due process rights since notice of hearing was mailed to alien's last provided address. Popa v. Holder, 571 F.3d 890, 2009 U.S. App. LEXIS 14590 (9th Cir. 2009).

Unpublished decision: Because petitioner alien made no arrangements with responsible person to forward his mail nor did he provide postal service with forwarding address, alien made no effort to contact immigration authorities to provide updated mailing information (despite being notified of his obligation to do so in both notice to appear and as condition of his release from custody), and alien did not even assert that he was eligible for any form of relief from

removal prior to his marriage to naturalized United States citizen in 2007 (he thus would have had incentive to avoid his removal hearing), evidentiary hearing was not called for and BIA acted within its discretion in denying alien's motion to reopen removal proceedings based on his claim that he had not received notice of hearing. *Ramos-Olivieri v. AG of the United States, 624 F.3d 622, 2010 U.S. App. LEXIS 19435 (3d Cir. 2010)*.

Unpublished decision: Deadline for filing motion to reopen was not tolled based on counsel's failure to notify alien of outcome of appeal to BIA because record indicated that order dismissing appeal was mailed to address that alien provided on his notice of appeal; alien's assertion that he relocated after notice of appeal was delivered did not rebut presumption of receipt because *8 USCS § 1229(a)(1)(F)* required alien to inform Attorney General of any change in alien's address. *Mehmood v. Keisler, 2007 U.S. App. LEXIS 23689 (2d Cir. Oct. 9, 2007)*.

Unpublished decision: Daughter's due process rights were not violated by absentia removal nor were her statutory rights under *8 USCS § 1229(c)* because she gave incorrect address in her asylum application and conceded receiving earlier notice of removal proceedings that expressly explained obligation to inform immigration court of any incorrect addresses under *8 C.F.R. § 1003.15(d)*; thus, where daughter failed to abide by address reporting requirements, notice for absentia removal was sufficient under *8 USCS § 1229a(b)(5)(B)*. *Pereira v. United States AG, 146 Fed. Appx. 408, 2005 U.S. App. LEXIS 19093 (11th Cir. 2005)*.

Unpublished decision: Government provided sufficient notice under *8 USCS §§ 1229a(b)(5)*, *1229* of new hearing date to petitioner; petitioner did not dispute that he received his notice to appear at his last known address, and there was no evidence that petitioner ever notified Department of Homeland Security of his change of address; Attorney General mailed written notice of new hearing date to his last known address. *Cavilha v. United States AG, 208 Fed. Appx. 770, 2006 U.S. App. LEXIS 29536 (11th Cir. 2006)*.

Unpublished decision: Board of Immigration Appeals did not abuse its discretion in denying alien's motion to reopen proceedings ordering his in absentia removal to Jamaica under *8 USCS § 1229a(b)(5)(C)*; alien failed to appear at his deportation hearing after former Immigration and Naturalization Service (INS) mailed notice to appear to alien's last known address, and even though notice was returned as undeliverable, alien failed in his affirmative duty to notify INS of change of address within 10 days of change as required under *8 USCS § 1305*; therefore, he was precluded from claiming that INS did not provide him with notice of hearing and did not demonstrate that he did not receive notice in accordance with *8 USCS § 1229(a)*. *Johnson v. United States AG, 222 Fed. Appx. 881, 2007 U.S. App. LEXIS 6363 (11th Cir.)*, reh'g denied, reh'g, en banc, denied, *254 Fed. Appx. 802, 2007 U.S. App. LEXIS 30499 (11th Cir. 2007)*.

Unpublished decision: Alien's Fifth Amendment due process claim failed as matter of law because he conceded that hearing notice sent to him complied with *8 USCS § 1229*; fact that alien did not receive notice, because he had failed to inform immigration court, his attorney, or immigration authorities of his current address, did not establish violation of his constitutional rights. *Kasyupa v. Keisler, 252 Fed. Appx. 106, 2007 U.S. App. LEXIS 25120 (8th Cir. 2007)*.

Unpublished decision: BIA did not abuse its discretion by affirming IJ's decision to deny alien's motion to reopen removal proceedings after IJ ordered him deported in absentia pursuant to *8 USCS § 1229a(b)(5)(A)*; alien failed to rebut presumption of receipt accorded to notice sent by regular mail and, thus, breach of alien's duty to notify Department of Homeland Security of his address change as required under *8 USCS § 1229(a)(1)* permitted alien to be ordered deported in absentia under § 1229a(b)(5)(B). *Ly v. Holder, 327 Fed. Appx. 616, 2009 FED App. 0360N, 2009 U.S. App. LEXIS 10821 (6th Cir. 2009)*.

Unpublished decision: In case in which alien appealed BIA's dismissal of his appeal of IJ's denial of his motion to reopen and to rescind his in absentia removal order, BIA did not err in determining that alien was provided proper notice of his removal proceedings; Notice to Appear (NTA) was sent to address that alien had provided in his asylum application only two months before NTA was sent, and he did not provide his most recent address in writing to Department of Homeland Security (DHS); therefore, address used by DHS qualified as *8 USCS § 1229(a)(1)(F)* address. *Barrios v. United States AG, 457 Fed. Appx. 831, 2012 U.S. App. LEXIS 2284 (11th Cir. 2012)*.

Because the U.S. Immigration and Customs Enforcement (ICE) is now responsible for providing the alien's address to the immigration court when it files the notice to appear (NTA), *8 U.S.C.S. §1229* is read through the lens of *6 U.S.C.S. § 557* to require the alien to provide a change of address to ICE at least until the NTA has been filed with the immigration court. *Fuentes-Pena v. Barr, 917 F.3d 827, 2019 U.S. App. LEXIS 6819 (5th Cir. 2019)*.

Immigration and Nationality Act allows in absentia removal if an alien fails to attend a hearing after being provided the written notice required for the hearing, and an alien can move to reopen that hearing if he shows that the government did not provide notice of it; however, an alien cannot benefit from dodging a hearing or failing to keep the government informed of his current address. Thus, because the alien did not tell the government when he moved, and he let his removal proceedings lie dormant for nearly 15 years, a flaw in the initial notice handed to him did not entitle him, years later, to another chance at avoiding removal. *Dacostagomez-Aguilar v. United States AG, 40 F.4th 1312, 29 Fla. L. Weekly Fed. C 1392, 2022 U.S. App. LEXIS 19910 (11th Cir. 2022)*, cert. dismissed, *143 S. Ct. 1102, 215 L. Ed. 2d 666, 2023 U.S. LEXIS 1664 (2023)*.

Hearing notice sent to alien's last known address by regular mail satisfied notice requirement pursuant to *8 USCS § 1229*, where alien failed to comply with her obligation to provide Immigration Court with current address, which obligation had been set forth in Notice to Appear, notwithstanding alien's assertion that it was up to her brother to notify Court regarding her address change as he was her agent for matters pertaining to bond and future court appearances. *In re: Andrea Lourdes Canela, 2010 Immig. Rptr. LEXIS 3103 (BIA & AAU Non-Precedent Decisions, Mar. 25, 2010)*.

22. —Incorrect address information used

Immigration and Naturalization Service (INS) failed to meet *8 USCS § 1229(a)(1)*'s requirement because zip code used on hearing notice was incorrect, notice was not properly directed, and INS could not have benefited from rebuttable presumption that notice reached its destination. *Busquets-Ivars v. Ashcroft, 333 F.3d 1008, 2003 Cal. Daily Op. Service 5473, 2003 D.A.R. 6924, 62 Fed. R. Evid. Serv. (CBC) 717, 2003 U.S. App. LEXIS 12739 (9th Cir. 2003)*.

Unpublished decision: Review of order denying motion to reopen *8 USCS § 1229a(b)(5)(A)* in absentia removal proceedings was denied because record supported finding that under *8 USCS § 1229(c)*, petitioner alien received notice of deportation hearing in that, while it was addressed to "Haperville," instead of "Hapeville," alien's address, IJ had found that there was no "Haperville." *Kantibhai-Patel v. United States AG, 243 Fed. Appx. 452, 2007 U.S. App. LEXIS 14274 (11th Cir. 2007)*.

Alien who fails to provide viable mailing address/to correct erroneous address forfeits his right to notice under this *8 U.S.C.S. § 1229a*; where alien gave one incorrect letter in his address, he forfeited his right to notice of removal hearing because he failed to correct erroneous address listed in his "Notification Requirement for Change of Address" and Form I-830. *Cardenas v. Garland, 70 F.4th 232, 2023 U.S. App. LEXIS 13726 (5th Cir. 2023)*.

Alien did not receive notice of hearing as required by *8 USCS § 1229(a)(2)* and was therefore entitled to reopening of removal proceedings, where notice sent by Immigration Court listed different zip code than what she had provided and hearing notice had been returned to *Immigration Court. In re: Suvatcharee Thonghong, 2010 Immig. Rptr. LEXIS 3681 (BIA & AAU Non-Precedent Decisions, Mar. 30, 2010)*.

Alien's motion to reopen removal proceedings was improperly denied, where alien notified INS of his new address at "P.O. Box 113, Fruitland, MD 21826," but Notice to Appear was mailed by regular mail to alien at "P.O. Box 113, 200 Theodore St., Fruitland, Maryland 21826," which was incorrect address. *In re: Pierre Luc, 2010 Immig. Rptr. LEXIS 3377 (BIA & AAU Non-Precedent Decisions, Mar. 31, 2010)*.

23. Recipient of notice

In case where immigrant was appealing denial of her motion to reopen removal order entered in absentia, appellate court could not entertain appeal based on immigrant's allegation that she personally failed to receive notice of her removal hearing, for it was undisputed that immigrant's former attorney received timely notice of hearing, and service upon her attorney was considered to be legally sufficient. *Bejar v. Ashcroft, 324 F.3d 127, 2003 U.S. App. LEXIS 5679 (3d Cir. 2003)*.

Juvenile alien was entitled to reopen deportation proceedings, where adult relative into whose custody he had been released had not received notice and order to show cause, and notice given failed to comply with due process; in absentia order of deportation was reversed. *Flores-Chavez v. Ashcroft, 362 F.3d 1150, 2004 U.S. App. LEXIS 5572 (9th Cir. 2004)*.

There was no merit to alien's claim that government failed to provide him with proper notice of his asylum hearing under Immigration and Nationality Act; all of applicable provisions of Immigration and Nationality Act, *8 USCS §§ 1229a(b)(5)(A)*, *1229(a)(1)*, and *1229(a)(2)(A)*, explicitly stated that government must provide notice to petitioner or his or her counsel of record, if any, and counsel was provided with notice. *Grigous v. Gonzales, 460 F.3d 156, 2006 U.S. App. LEXIS 21596 (1st Cir. 2006)*.

Denial of petitioner alien motion to reopen his removal proceedings was vacated and remanded to BIA for reconsideration and to provide interpretation of statutory and regulatory framework regarding service upon minors, particularly minors such as alien, who were released to responsible adult pursuant to *8 CFR § 236.3(a)*; alien was only 15 years old when notice of hearing was issued, and his uncle, into whose custody he had been released, was not served with notice of hearing. *Llanos-Fernandez v. Mukasey, 535 F.3d 79, 2008 U.S. App. LEXIS 15402 (2d Cir. 2008)*.

In granting petition for review of denial of motion to reopen based on failure of immigration court to serve notice of removal hearing on petitioner alien's counsel of record, court held that in absentia removal order had to be rescinded if government sent notice of time and place of removal hearing by mail to address provided by alien, but (1) BIA did not prove alien received actual notice; (2) alien proved that he was represented by counsel who filed notice of appearance as counsel of record before such notice was sent; and (3) government did not prove it sent notice to alien's counsel of record; BIA erred when it adopted and affirmed IJ's decision. *Hamazaspyan v. Holder, 590 F.3d 744, 2009 U.S. App. LEXIS 28178 (9th Cir. 2009)*.

Because petitioner 9-year old alien was served with Notice to Appear that complied with *8 USCS § 1229(a)(1)*, and she, her parents, and counsel appeared and conceded removability, due process was satisfied; defect in service under *8 CFR § 103.5a(c)(2)(ii)*, standing alone, did not implicate minor alien's fundamental rights. *Nolasco v. Holder, 637 F.3d 159, 2011 U.S. App. LEXIS 3785 (2d Cir. 2011)*.

Mentally disabled aliens had shown that existing safeguards were inadequate and did not satisfy requirements of Rehabilitation Act where notices to appear were not served on either alien's representative. *Franco-Gonzales v. Holder, 767 F. Supp. 2d 1034, 2010 U.S. Dist. LEXIS 143215 (C.D. Cal. 2010)*, injunction granted in part, *828 F. Supp. 2d 1133, 2011 U.S. Dist. LEXIS 139833 (C.D. Cal. 2011)*.

Unpublished decision: Alien's petition for review of a denial of a motion to reopen her removal in absentia pursuant to *8 USCS § 1229a(b)(5)(A)* was denied because she had not shown that her attorney did not receive the notice sent and she made no attempt to comply with Lozada or otherwise show ineffective assistance of counsel beyond her bare allegations; *8 USCS § 1229(a)* specifically allowed mailing of notice either to the alien or her attorney, but it did not require both. *Shan Fu Cui v. Holder, 347 Fed. Appx. 101, 2009 U.S. App. LEXIS 21437 (5th Cir. 2009)*.

Unpublished decision: In case in which alien appealed order by BIA dismissing his appeal to reopen and rescind in absentia removal order, alien unsuccessfully argued that he never received notice of his removal hearing; alien argued that he had not retained named attorney as his counsel and had not received notice of hearing, but government had discharged its obligations under *8 USCS § 1229(a)(1)* by serving written notice on alien's counsel

of record. *Edin Yobani Recinos Orellana v. AG of the United States, 405 Fed. Appx. 624, 2010 U.S. App. LEXIS 25879 (3d Cir. 2010)*.

Unpublished decision: In case in which alien appealed BIA's dismissal of his appeal of IJ's denial of his motion to reopen his in absentia removal proceedings, exceptional circumstances did not exist; he claimed he did not receive notice of master calendar hearing in which he was ordered removed, but his counsel acknowledged that she received notice of hearing, and that was sufficient notice to alien. *Silva Ramos v. Holder, 466 Fed. Appx. 313, 2012 U.S. App. LEXIS 3523 (4th Cir. 2012)*.

Unpublished decision: In case in which alien appealed BIA's dismissal of his appeal of IJ's denial of his motion to reopen his in absentia removal proceedings, exceptional circumstances did not exist; while alien's counsel acknowledged that she received notice of master calendar hearing, she argued that notice was not proper because she was only representing alien for bond hearing; however, counsel's notice of appearance clearly informed her that limited appearance was not permitted unless authorized by IJ and that counsel was not permitted to withdraw unless permission was granted from IJ. *Silva Ramos v. Holder, 466 Fed. Appx. 313, 2012 U.S. App. LEXIS 3523 (4th Cir. 2012)*.

Unpublished decision: Alien who was ordered removed in absentia was not entitled to have proceedings reopened based on claim that alien's attorney did not provide notice of asylum hearing; notice was properly served on alien's counsel of record, and such service satisfied due process. *Rahiman v. United States AG, 479 Fed. Appx. 946, 2012 U.S. App. LEXIS 13112 (11th Cir. 2012)*.

Unpublished decision: BIA properly denied alien's motion to reopen his removal in absentia because notice of removal hearing was sent to alien's attorney, which was sufficient under *8 USCS § 1229(a)*, and there was no evidence that alien's bar complaint was ever filed or sent to his attorney in order to establish factual predicate for ineffective assistance claim. *Al-Ujaimy v. Gonzales, 2007 FED App. 0313N, 2007 U.S. App. LEXIS 11037 (6th Cir. May 7, 2007)*.

Instead of terminating removal proceedings based on his conclusion that DHS failed to establish service of Notice to Appear at alien's last known address, Immigration Judge should have proceeded in absentia, where transcript reflected that alien's counsel conceded that she was served with *Notice to Appear. In re: Parveen Patel, 2010 Immig. Rptr. LEXIS 5112 (BIA & AAU Non-Precedent Decisions, Jul. 30, 2010)*.

Alien's motion to reopen was not untimely and rescission of removal order was warranted, where notice of hearing was given to attorney who had entered appearance on alien's behalf but who had not been retained by alien or authorized to represent him, and letter from attorney to alien gave incorrect date for rescheduled hearing and did not include copy of notice showing correct date. Matter of __, File: *N/A, 2009 Immig. Rptr. LEXIS 970 (BIA & AAU Non-Precedent Decisions, July 21, 2009)*.

Respondent received proper notice inasmuch as written notice of hearing was provided to his attorney of record, who appeared at hearing without respondent, and fact that attorney was allowed to withdraw on day of respondent's last hearing was irrelevant to issue of proper notice. *In re: Pablo Candido Montes, 2009 Immig. Rptr. LEXIS 4612 (BIA & AAU Non-Precedent Decisions, Dec. 31, 2009)*.

Although notice of hearing was sent to attorney who filed motion to change venue on alien's behalf, notice was insufficient where attorney was not alien's counsel of record for purposes of *8 USCS § 1229(a)(1)*, notwithstanding that attorney telephonically informed alien of date (but not place) of hearing. *In re: Yingli, 2010 Immig. Rptr. LEXIS 2882 (BIA & AAU Non-Precedent Decisions, Jan. 19, 2010)*.

With respect to alien who failed to notify Immigration Court of address change, notice of hearing sent to last known address was sufficient pursuant to *8 USCS § 1229*, notwithstanding alien's argument that notice should have been sent to his counsel, where alien's counsel had not entered appearance before *Immigration Court. In re: Diogenes Lara-Reyes, 2010 Immig. Rptr. LEXIS 2798 (BIA & AAU Non-Precedent Decisions, Jan. 6, 2010)*.

24. Miscellaneous

Where petitioner alien and his wife had previously filed petition for alien relative and application to register permanent resident or adjust status, alien had appeared before INS several times since his entry to country, and had nothing to gain by failing to appear at removal hearing, alien's affidavit swearing that he did not receive notice of removal hearing that was sent by regular mail under *8 USCS § 1229(a)(1)* required evidentiary hearing on alien's motion, filed under *8 USCS § 1229a(c)(6)*, to reopen removal hearing. *Ghounem v. Ashcroft, 378 F.3d 740, 2004 U.S. App. LEXIS 15991 (8th Cir. 2004)*.

Alien conceded that he and his counsel received notice that removal hearing set for March 11, 2003, but both he and his attorney asserted that they never received hearing notice that reset March 11, 2003, hearing to February 13, 2003; however, when alien appeared for hearing on March 11, 2003, he was informed that at February 13, 2003, hearing removal order had been entered against him in absentia; pursuant to *8 USCS § 1229a(a)(5)(C)(ii)* and *8 USCS § 1229(a)(1)* and (2), in absentia removal order had to be rescinded based on alien's motion to reopen because: (1) hearing notices were sent through regular mail and postal receipts were not included in administrative record, nor was there copy of addressed envelope; (2) while immigration judge (IJ) characterized alien's and his attorney's affidavits as self-serving, IJ did not find evidentiary flaw in affidavits; and (3) record did not indicate that alien was attempting to avoid immigration proceedings. *Maknojiya v. Gonzales, 432 F.3d 588, 2005 U.S. App. LEXIS 26239 (5th Cir. 2005)*.

Even assuming that alien received sufficient notice of his removal proceeding under *8 USCS § 1229(a)(1)(F)*, IJ was without authority to order alien removed in absentia under *8 USCS § 1229a(c)(5)(A)* because record contained no evidence relevant to charge of removability under *8 USCS § 1227(a)(1)(C)(i)*. *Al Mutarreb v. Holder, 561 F.3d 1023, 2009 U.S. App. LEXIS 8240 (9th Cir. 2009)*.

Given statutory scheme as well as established principle that removal proceeding is civil, not criminal, in nature, there is no basis for relying on Federal Rules of Criminal Procedure, specifically *Fed. R. Crim. P. 31(c)*, to conclude that *8 USCS § 1101(a)(43)(M)* necessarily includes charge under *8 USCS § 1101(a)(43)(U)*, especially where doing so would relieve Government of its notice obligations under *8 USCS § 1229(a)(1)*. *Pierre v. Holder, 588 F.3d 767, 2009 U.S. App. LEXIS 26623 (2d Cir. 2009)*.

Alien admitted that he arrived in U.S. on October 19, 1999, and he was served with Notice to Appear (NTA) on October 14, 2009, thus alien missed ten years' continuous physical presence requirement by mere five days; inquiry on appeal was to determine whether there was any merit in argument that first NTA did not stop time for purposes of accruing continuous physical presence and there was not; alien conceded removability based on substituted charge of overstaying as described in I-261, but nonetheless argued that discretionary relief, specifically, cancellation of removal, was available to him; but he was afforded ample notice of substituted charge, failed to object to filing of new charge, and had opportunity to respond at hearing before IJ and moreover, alien admitted that government had authority to amend NTA at any time and there was no requirement that government name every possible ground for removability in original NTA. *Ka Cheung v. Holder, 678 F.3d 66, 2012 U.S. App. LEXIS 9054 (1st Cir. 2012)*.

Where government denied naturalization applications and served removal notices while suit by Indian aliens seeking judicial determination of their naturalization applications was pending, government did not establish that removal proceedings were actually instituted for purposes of staying aliens' lawsuit because government did not show that notices to appear were properly filed with immigration court, or that actual service of notices was attempted or found actually impracticable, which was required by *8 USCS § 1229* to commence removal proceedings. *Agarwal v. Napolitano, 663 F. Supp. 2d 528, 2009 U.S. Dist. LEXIS 94283 (W.D. Tex. 2009)*.

Unpublished decision: Court of appeals denied alien's petition for review of order issued by U.S. Board of Immigration Appeals, which affirmed immigration judge's ruling denying alien's motion to reopen in absentia removal proceedings, because government showed that alien did not learn that date of hearing was changed only

because he failed to check his mail on regular basis, and that was not excusable neglect. *Ngalim v. Gonzales, 134 Fed. Appx. 557, 2005 U.S. App. LEXIS 11306 (3d Cir. 2005)*.

Unpublished decision: BIA did not abuse its discretion in denying aliens' motion to reopen removal proceedings to rescind removal order entered in absentia where aliens conceded removability before immigration judge and received personal service of notice to appear in compliance with *8 USCS § 1229(a)*. *Krishna v. Gonzales, 139 Fed. Appx. 355, 2005 U.S. App. LEXIS 15519 (2d Cir. 2005)*.

Unpublished decision: Immigration judge properly denied claimant's motion to reconsider denial to reopen absentia removal order because notice of hearing had been sent to claimant's correct address, which was sufficient notice under *8 USCS § 1229(c)* to satisfy requirements for absentia removal and claimant admitted to receiving earlier notice as well as order of removal. *Pereira v. United States AG, 146 Fed. Appx. 408, 2005 U.S. App. LEXIS 19093 (11th Cir. 2005)*.

Unpublished decision: Immigration judge did not abuse her discretion in denying alien's motion to reopen proceedings in which alien was removed in absentia because hearing notice required by 28 USCS § 1229(a)(1) was mailed to alien's address of record and alien did not provide sworn affidavit containing information to rebut presumption of delivery created by regular mail. *Lopez v. Gonzales, 155 Fed. Appx. 334, 2005 U.S. App. LEXIS 27546 (9th Cir. 2005)*.

Unpublished decision: Pursuant to Fifth Circuit, it is abuse of discretion for immigration judge to deny petitioner's motion to reopen where hearing notification change was sent by regular mail and where petitioner and his attorney submitted affidavits asserting that they received no notice of change. *Joan Jepkirui Settim v. Gonzales, 171 Fed. Appx. 436, 2006 U.S. App. LEXIS 6333 (5th Cir. 2006)*.

Unpublished decision: Pursuant to jurisdiction to review constitutional claims under *8 USCS § 1252(a)(2)(D)*, motion to reopen final removal order issued in absentia after finding of inadmissibility under *8 USCS § 1182(a)(2)(A)* was properly denied under *8 USCS § 1229a(c)(7)(B)* because notice of hearing change sent to alien's counsel via regular mail complied with *8 USCS § 1229(a)(2)(A)*, was calculated to ensure proper notice, and satisfied due process; bare allegations by counsel of nonreceipt, unsupported by affidavit or documentary evidence, did not rebut delivery presumption. *Castillo v. United States AG, 181 Fed. Appx. 885, 2006 U.S. App. LEXIS 12510 (11th Cir. 2006)*.

Unpublished decision: Fact that alien allegedly did not receive notice that in absentia removal order had been entered against him was irrelevant for purposes of *8 USCS § 1229a(b)(5)(C)(i)*, which required him to file motion to reopen removal proceedings within 180-days after order was issued; alien's motion to reopen was properly denied because it was not filed within 180 day time limit set out in § 1229a(b)(5)(C)(i), and § 1229a(b)(5)(C)(ii), which allowed unlimited time for filing motions to reopen, did not apply to alien's case because he admitted that he had received notice of removal proceedings and consequences of failing to appear as required by *8 USCS § 1229(a)(1)*, (2). *Khan v. Gonzales, 187 Fed. Appx. 624, 2006 U.S. App. LEXIS 16228 (7th Cir. 2006)*.

Unpublished decision: Because Chinese immigrant did not present sufficient circumstantial evidence to overcome presumption of receipt of notice of hearing at immigrant's most recent and correct address, IJ did not abuse her discretion in denying immigrant's motion to reopen, in accordance with *8 USCS § 1229a(b)(5)*. *Junhao Cui v. Gonzales, 229 Fed. Appx. 4, 2007 U.S. App. LEXIS 7517 (2d Cir. 2007)*.

Unpublished decision: Board of Immigration Appeals properly denied alien's motion to reopen his removal proceedings following immigration judge's order of removal, entered in absentia under § 240(b)(5)(A) of Immigration and Nationality Act (INA), *8 USCS § 1229a(b)(5)(A)*, because alien had not rebutted presumption that he received hearing notice by regular mail under INA § 239(a)(1) or (2); record did not contain sufficient circumstantial evidence to support his claim of non-receipt of notice, and most importantly, alien did not allege that he sought, or was eligible for, any type of immigration relief, but rather, he was facing hearing at which only propriety of removal charge would be at issue. *Saeteros-Torres v. AG of the United States, 266 Fed. Appx. 151, 2008 U.S. App. LEXIS*

1988 (3d Cir.), cert. denied sub nom. *Maldonado v. Yeingst, 553 U.S. 1066, 128 S. Ct. 2516, 171 L. Ed. 2d 789, 2008 U.S. LEXIS 4481 (2008)*.

Unpublished decision: Court remanded BIA's decision affirming IJ's denial of Chinese citizen's motion to rescind IJ's prior order of removal under *8 USCS § 1229a(b)(5)(C)(ii)*; IJ and BIA did not consider evidence, both direct and circumstantial, that alien did not receive Notice to Appear in accordance with *8 USCS § 1229(a)* and were required to consider citizen's attempt to rebut presumption of receipt. *Mingze Hu v. United States DOJ, 267 Fed. Appx. 4, 2008 U.S. App. LEXIS 297 (2d Cir. 2008)*.

Unpublished decision: In case in which alien and his wife had been ordered removed in absentia, they argued unsuccessfully that government failed to establish by clear, unequivocal, and convincing evidence that they were properly notified of hearing date and of consequences of failing to appear at that hearing; record showed that alien and his wife were personally served with written notices to appear which provided that date and time of removal hearing was to be set, and specifically warned that if they failed to attend hearing at time and place designated on notice, or any date and time later directed by Immigration Court, removal order may be made by IJ in their absence, and they may be arrested and detained by Immigration and Naturalization Service, and both of them and their attorney were also personally served with written notice of hearing date. *Ek Hong Djie v. Holder, 310 Fed. Appx. 720, 2009 U.S. App. LEXIS 3932 (5th Cir. 2009)*.

Unpublished decision: A time limitation for motions to reopen based on changed country conditions is precluded by statute. *Azer v. Holder, 379 Fed. Appx. 695, 2010 U.S. App. LEXIS 10300 (9th Cir. 2010)*.

Unpublished decision: Because 2004 Notice to Appear Form I-862 was only document in case that qualified as "notice to appear" for purposes of one-year requirement, and because alien was not physically present in United States for year immediately preceding November 9, 2004, he was ineligible for voluntary departure. *Sagastume v. Holder, 490 Fed. Appx. 712, 2012 FED App. 0791N, 2012 U.S. App. LEXIS 14994 (6th Cir. 2012)*.

Unpublished decision: Dismissal of Pakistani citizen's petition for review of order denying her motion to reopen her removal proceeding was appropriate because she waited nine years after notice to appear was served and eight years after she was ordered removed in absentia, to inquire about status of her case; she retained counsel in July 2012, evidently to file motion to reopen and application for adjustment of status based on her husband's status. Her husband began process of adjusting his status in 2006, when his employer filed petition on his behalf, and he obtained permanent resident status in 2011. *Rahim v. Holder, 552 Fed. Appx. 358, 2014 U.S. App. LEXIS 947 (5th Cir. 2014)*.

102. Miscellaneous

Because immigration judge (IJ) held that hardship to petitioner's son did not satisfy *8 USCS § 1229b(b)(1)(D)*'s eligibility criteria, he never reached second step and exercised his unreviewable discretion to cancel or decline to cancel petitioner's removal; Third Circuit therefore erred in holding that it lacked jurisdiction to review IJs determination in this case. *Wilkinson v. Garland, 601 U.S. 209, 144 S. Ct. 780, 218 L. Ed. 2d 140, 30 Fla. L. Weekly Fed. S. 82, 2024 U.S. LEXIS 1380 (2024)*.

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3 Immigration Law and Procedure (rev. ed.), ch 35, Special Immigrants § 35.09.

5 *Immigration Law and Procedure (rev. ed.), ch 64*, Removal of Noncitizens §§ 64.01–64.05.

6 *Immigration Law and Procedure (rev. ed.), ch 72*, Procedure in Deportation Cases § 72.02.

8 *Immigration Law and Procedure (rev. ed.), ch 111*, Civil Liabilities and Criminal Offenses § 111.02.

Federal Taxation:

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 22, Collateral Consequences of a Criminal Tax Conviction § 22.05.

Annotations:

Validity, Construction, and Application of REAL ID Act of 2005, *Pub. L. No. 109-13*, *119 Stat. 231*. *11 ALR Fed 2d 1*.

Evidence Warranting Refusal of Admission, Removal, or Denaturalization for Nazi-Related Conduct. *180 ALR Fed 243*.

Commencement of Deportation Proceedings Under the Antiterrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). *185 ALR Fed 221*.

Hierarchy Notes:

8 USCS, Ch. 12

8 USCS, Ch. 12, Immigration

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