Presented:
Immigration Fundamentals: A Practical Guide to Removal Proceedings

April 20-21, 2010
Norris Conference Center – City Centre
Houston, Texas

May 13-14, 2010
Thompson Conference Center
Austin, Texas

May 25-26, 2010
Belo Mansion
Dallas, Texas

Appeals and Motions to Reopen

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DALLAS, TEXAS

In the Matter of	)	
	)	
XXX	)	
Xxx xxx	)	File No.: Axx xxx xxx
	)	
Respondent	)	
	)	
In Removal Proceedings	)	

RESPONDENT'S MOTION TO RESCIND IN ABSENTIA REMOVAL ORDER AND REOPEN REMOVAL PROCEEDINGS

Respondent, xx xxxx xxx, through his attorney, Mony. Ruiz-Velasco, hereby asks that this Court rescind its decision ordering the removal of Mr. Xxx-xxx and to reopen his case for the reasons stated below:

1. Respondent, Mr. Xxx-xxx, is a native and citizen of the Mexico.

2. Mr. Xxx-xxx entered the United States on or about March 1987 at El Paso, Texas as a Lawful Permanent Resident.

3. Mr. xxx was convicted on December 7, 1998 in the United States District Court, for the offense of Conspiracy to Commit Naturalization Fraud, for which he was sentenced to a 3-year term of probation.

4. In October, 2001, Mr. Xxx was denaturalized, which stripped him of his citizenship, but not of his permanent residency. The only means by which Mr. Xxx could lose his permanent resident status would be upon receiving a final order of removal. *See* 8 C.F.R. § 1.1(p).

5. On April 2, 2002, xx xxx, from the xxxx xx, counsel for Mr. Xxx , requested a copy of Mr. Xxx xxx's file from the INS Houston District Office pursuant to the Freedom of Information Act, at which time, she filed a Notice of Entry of Appearance as Attorney, form G-28. (See Exhibit A)

6. In addition, in _____, the xxxxx made a request to the Dallas Bureau of Citizenship and Immigration Services (BCIS) asking for prosecutorial discretion on behalf of Mr. Xxx-xxx.

7. On April 15, 2003, the xxxxx received copies of Mr. Xxx-xxx's BCIS file, pursuant to the Freedom of Information Act. In it, the undersigned counsel for Mr. Xxx-xxx discovered that on May 13, 2002, one month after the instant law firm filed a G-28 on behalf of Mr. Xxx-xxx, the BCIS issued a Notice to Appear (NTA) for Mr. Xxx-xxx chagrining him with removability from the United States.

8. In addition, the address on Mr. Xxx's NTA reads 1915 Cushing Drive, Tyler, Texas, which is an address where Mr. Xxx has not resided for more than fifteen years.

9. Furthermore, the xxxx, which has been of record for Mr. Xxx since April 2002, did not receive a copy of the NTA nor of any subsequent hearing notices before the Immigration Court. (See Exhibit 2, Affidavit from Attorney)

10. In addition, BCIS was fully aware of Mr. Xxx xxx's more recent address for BCIS arrested his wife at their home approximately four years ago. Although, Mr. Xxx xxxx no longer resides there, he continues to regularly receive mail at that address. (See Exhibit 3, Affidavit of Mr. Xxx xxx)

11. Mr. Xxx-xxx did not receive notice of his being placed in removal proceedings, nor of any set hearing before the Immigration Court.

12. On August 22, 2002, as a result of his absence, Mr. Xxx-xxx was ordered removed *in absentia* from the United States by the Immigration Judge.

13. On April 16, 2003, Mr. xxxxx first discovered that he had been ordered removed.

14. Mr. Xxx-xxx asks this Court to rescind the *in absentia* order and reopen his case. The BCIS should have served Mr. Xxx-xxx at the address they were fully aware of at 611 S. Kennedy, Tyler Texas 75702. Such address was also listed as Mr. Xxx-xxx's address on the executed G-28 from April 2002, as well as on the FOIA request form G-639.

15. In addition, the BCIS had on file an executed G-28 from Attorney. The BCIS did not serve upon Mr. Xxx-xxx's counsel with a copy of the NTA nor any document identifying that Mr. Xxx was being placed in removal proceedings.

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