

RONALD EHLBERT SMITH, ATTORNEY  
Ronald E. Smith, Attorney at Law

[REDACTED]  
Atlanta, GA 30306  
Telephone: (678) 462-7777

Attorney for Respondent

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
THE IMMIGRATION COURT  
ATLANTA, GEORGIA**

**In Re The Matter of:** ) **File No. A87-214-763**  
 ) **File No. A87-214-763**  
 [REDACTED], )  
 **Respondent,** )  
 )  
 **In Removal Proceedings.** )  
 \_\_\_\_\_ )

**Immigration Judge: Earle B. Wilson**

**Next Hearing: N/A**

**RESPONDENT’S MOTION TO STAY REMOVAL, REOPEN HER CASE**

**AND RESCIND HER IN ABSENTIA ORDER OF REMOVAL**

Respondent [REDACTED], through her attorney, Ronald Ehlbert Smith, hereby asks that this Court reopen her case for the new facts and reasons stated below, to allow her to apply for Permanent Residency in the United States with the United States Citizenship and Immigration Service by rescinding the order of removal and allowing Respondent sufficient reasonable time to file with the USCIS:

1. On February 13, 2012, the undersigned attorney appeared before this court along and without the presence of Respondent, her husband, [REDACTED] and her step-son, [REDACTED]. Mr. [REDACTED] had before January 7, 2012 steadfastly maintained very responsive communication with this attorney and the exclusive English speaking representative of

the Respondent and had appeared with this attorney in all previous conferences and court appointments.

2. From early January 2012 until after the Master Calendar hearing on February 13, 2012 Tam Le had failed to respond to numerous telephone and email messages to suggest why they were not present in court. Therefore, this attorney had no explanation to give to the court. The immigration judge held a brief in absentia hearing, issued an In Absentia Order of Removal and gave this attorney a copy of the written order.
3. This attorney then walked immediately to the City Hall of Atlanta near this court's building, where he knew [REDACTED] had previously indicated to him that he was employed on a daily basis.
4. After about one hour searching this attorney did find [REDACTED] and confronted him with the court order and asked questions about why he had failed to respond to numerous calls and emails as well as to why he had failed to present the Respondent in court earlier that day. [REDACTED] was visibly astonished and dismayed. His explanations at that time were in agreement with what he and his wife, [REDACTED], have provided the attached affidavits.
5. The attached affidavits mentioned in paragraph "4" are incorporated by reference into this motion. Each one is identified and entitled as "AFFIDAVIT IN SUPPORT OF MOTION TO REOPEN AN IN ABSENTIA ORDER" from [REDACTED] and his wife, [REDACTED]. These affidavits refer to a single copy Respondent Exhibits "A" through "E", which are also incorporated by reference into this motion.
6. The affidavits and exhibits clearly show that Respondent, [REDACTED], is a native and citizen of the Vietnam and can only understand the Vietnamese language. She is totally

dependent on the guidance, understanding and translation of English communication with this court, as well as totally dependent for transportation to this court with and through her resident family and in particular, [REDACTED]

7. The attached affidavits and exhibits manifest that [REDACTED] experienced new exceptional circumstances that were beyond her control that prevented her from being present before the court on her last Master Calendar of February 13, 2012.
8. Based on all new facts and exceptional circumstance that were beyond her control as mentioned in this motion and the incorporated affidavits with exhibits, [REDACTED] asks this Court to reopen her case. On February 13, 2012, [REDACTED] was involuntarily placed in the custody of her daughter in the State of Louisiana and was not free to leave; therefore, her failure to appear was through no fault of her own. See INA 240(b)(5)(C)(i) and 240(e)(1).
9. By and through the undersigned attorney, Respondent would maintain that [REDACTED] exceptional circumstances outside of her control are at least analogous to 8 C.F.R. §3.23(b)(4)(ii) (if the alien demonstrates that he was in state custody and failure to appear was through no fault of her own).
10. After a reasonable time from this court's anticipated reopening of her case [REDACTED] further asks this Court to reopen her case in order to allow her an opportunity to apply for Permanent Residency in the United States.
11. Respondent expects to provide this court with copies of a completed I-485 Application Form and USCIS receipt of the application within a reasonable time after [REDACTED] husband returns from Vietnam.

[REDACTED] asks that the Immigration Judge stay her removal order, reopen her case and rescind her in absentia order of removal. Based upon the foregoing, it is respectfully submitted that this motion be granted. [REDACTED] maintains that the above mentioned new facts comprise exception circumstances beyond her control that should merit reopening her case and rescinding the current in absentia order. Respondent is confident that her application for Permanent Residency will be granted. Respondent also maintains that she and her family greatly fear her loss of immediate family protection and support in the United States and the lack of any such protection and support in her country Vietnam.

Dated: March 8, 2012.

Respectfully submitted,

\_\_\_\_\_  
RONALD EHLBERT SMITH  
Attorney for Respondent

#### **CERTIFICATE OF SERVICE**

I, Ronald Ehlbert Smith, do hereby certify that on March 8, 2012, copies of respondent's motion to reopen and its supporting documentation were served on the ICE by placing copies in the U.S. Mail at Atlanta, Georgia, addressed to Alfredia Owens, Chief Counsel, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, 180 Spring Street S.W., Suite 332, Atlanta, Georgia 30303.

Dated: March 8, 2012.

\_\_\_\_\_  
RONALD EHLBERT SMITH