

Law Office of

# Charles Medina

## Immigration Judge Reopens Proceedings After Failed N-400 Application

In 2001, Client became a lawful permanent resident (LPR). In 2011, she filed her N-400 naturalization application. In 2012, USCIS denied this N-400 application because it found that an Immigration Judge (IJ) had ordered Client's removal from the U.S. in 1998. It turned out that the then INS placed Client in removal proceedings due to a failed application that preceded her application for LPR status.

After the denial of her N-400, Client retained our services. We explained to Client that she had to file a motion to reopen (MTR) her removal proceedings because, under INA 318, no person with an outstanding removal order may be naturalized and an MTR is the only relief that could annul a removal order at that stage.

We filed an MTR based on Client's failure to receive her notice to appear (NTA) and hearing notice. We were able to persuade the IJ to reopen the proceedings because we showed proof that Client did not receive the NTA and that she was diligent in filing her MTR and had an incentive to appear at the hearing that she missed. Client now has an opportunity to clear all doubts on the validity of her LPR status and pave the way for a successful N-400 application.

Please see the attachment(s) in the next page(s).

Disclaimer: This material is not intended to provide legal advice on any specific concern that the reader may have. The successful outcome of the case described above does not in any way guarantee a similar outcome in any specific legal matter concerning the reader. The reader should seek the advice of any counsel if he or she has a specific immigration problem.  
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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
606 SOUTH OLIVE ST.  
LOS ANGELES, CA 90014

CHARLES MEDINA, ESQ.  
6281 BEACH BLVD., SUITE 325  
BUENA PARK, CA 90621

IN THE MATTER OF

FILE A

DATE: Dec 19, 2012

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK  
P.O. BOX 8530  
FALLS CHURCH, VA 22041

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT  
606 SOUTH OLIVE ST.  
LOS ANGELES, CA 90014

X OTHER: IJ Decision

M. Perle  
COURT CLERK  
IMMIGRATION COURT

FF

CC: CHIEF LEGAL OFFICER  
606 S. OLIVE ST., 8TH FLOOR  
LOS ANGELES, CA, 900140000

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
LOS ANGELES, CALIFORNIA

In the Matter of:

File No. A- [REDACTED]

[REDACTED]

**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of Respondent's Motion to Reopen In Absentia Order Due to Failure to Receive Notice, it is HEREBY ORDERED that the motion be  GRANTED  DENIED because:

- DHS does not oppose the motion.
- The Respondent does not oppose the motion.
- A response to the motion has not been filed with the court.
- Good cause has been established for the motion.
- The court agrees with the reasons stated in the opposition to the motion.
- The motion is untimely per \_\_\_\_\_.
- Other: \_\_\_\_\_

Deadlines:

- The application(s) for relief must be filed by \_\_\_\_\_.
- The respondent must comply with DHS biometrics instruction by \_\_\_\_\_.

12/13/12  
Dated

[REDACTED]  
Immigration Judge

Certificate of Service

This document was served by:  Mail  Personal Service

To:  Alien  Alien c/o Custodial Officer  Alien Atty/Rep  DHS

Date: December 19, 2012

By: Court Staff Ms. P. [REDACTED]

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Santa Ana Field Office  
34 Civic Center Plaza  
Santa Ana, CA 92701



U.S. Citizenship  
and Immigration  
Services

Date SEP 04 2012

A [REDACTED]  
NBC [REDACTED]

### DECISION

Dear [REDACTED].

Thank you for submitting Form N-400, Application for Naturalization, to U.S. Citizenship and Immigration Services (USCIS) under section 316 of the Immigration and Nationality Act (INA).

After a thorough review of the information provided in your application for naturalization, the documents supporting your application, and your testimony during your naturalization interview, USCIS has determined that you are not eligible for naturalization. Accordingly, USCIS must deny your application for naturalization.

Generally, to qualify for naturalization under INA 316, an applicant must:

- Be 18 years of age or older at the time of filing Form N-400;
- Be lawfully admitted for permanent residence;
- Be a lawful permanent resident for at least 5 years at the time of filing Form N-400;
- Demonstrate good moral character for at least 5 years prior to the Form N-400 filing date, and during the period leading to administration of the Oath of Allegiance;
- Have resided continuously in the United States for at least 5 years as a lawful permanent resident before filing Form N-400;
- Have resided for at least 3 months in the State or USCIS District where residency is claimed before filing Form N-400;
- Have resided continuously in the United States from the date of filing Form N-400 up to the time of administration of the Oath of Allegiance;
- Be physically present in the United States for at least 2½ years at the time of filing Form N-400;
- Demonstrate a basic knowledge of U.S. history and government;
- Demonstrate the ability to read, write, and speak words in ordinary usage in the English language; and

- Establish an attachment to the principles of the U.S. Constitution and be disposed to the good order and happiness of the United States.

### Statement of Facts and Analysis Including Ground(s) for Denial

On [REDACTED], 2001 you obtained permanent residence status through your employer in immigrant classification E36 Skilled worker. USCIS received your Form N-400 on [REDACTED], 2011, and on [REDACTED], 2012 you appeared for an interview to determine your eligibility for naturalization.

During the interview and review of your application before an Immigration Services Officer, you certified under oath that all of the responses and answers you provided were true and correct to the best of your knowledge.

After review of your record, USCIS has determined that you were placed in removal proceedings before an Immigration Judge of the Executive Office for Immigration Review on [REDACTED] 1998, in Los Angeles, CA. On [REDACTED] 1998, you were ordered removed in absentia.

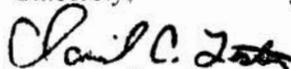
On [REDACTED], 2012 a notice of intent to deny your application for naturalization was sent to you informing you of your ineligibility for citizenship due to the outstanding removal order. As of the date of this notice you have not submitted evidence that the order has been reopened or that your removal proceedings have been reopened.

Under INA 318, no person may be naturalized if she has an outstanding final order of deportation or removal. Since you were ordered removed you are barred from naturalizing.

If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See 8 CFR 336.2 (a) and 103.8(b). Without a properly filed Form N-336, this decision will become final. See INA 336.

To access Form N-336 or if you need additional information, please visit the USCIS Web site at [www.uscis.gov](http://www.uscis.gov) or call our National Customer Service Center toll free at 1-800-375-5283. You may also make an appointment to speak to a USCIS staff member in person at the USCIS office having jurisdiction over your current place of residence. To schedule an appointment, go to [www.uscis.gov](http://www.uscis.gov) and select INFOPASS.

Sincerely,



David A. Lester  
Field Office Director

Signed for by:

[REDACTED] Director