

File Name: 07a0204p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUAN MARTINEZ-MARROQUIN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney General,

Respondent.

No. 06-4380

Filed: June 4, 2007

Before: GIBBONS and COOK, Circuit Judges; CLELAND, District Judge.*

ORDER

The petitioner seeks judicial review of a decision of the Board of Immigration Appeals (“BIA”) denying his motion to reopen his removal proceedings and rescind an immigration judge’s in absentia order of removal. The petitioner’s proof brief was filed on March 26, 2007. The respondent now moves to remand this case to the BIA to consider the issue of whether the petitioner carried his burden to demonstrate that the in absentia order of removal should be rescinded pursuant to 8 U.S.C. § 1229a(b)(5)(C)(ii) because he did not receive notice of the removal hearing. The petitioner does not oppose the motion.

The effect of a remand is to render the BIA’s decision nonfinal “and hence not judicially reviewable.” *Ren v. Gonzales*, 440 F.3d 446, 448 (7th Cir. 2006). A remand will not, however, result in the loss of the petitioner’s right to judicial review. *See Lopez-Ruiz v. Ashcroft*, 298 F.3d 886, 887 (9th Cir. 2002). In view of the foregoing circumstances, we find the respondent’s motion to be well taken. The petitioner is cautioned that if the BIA does not rule in his favor, a new timely petition for review must be filed.

The motion for remand is **GRANTED**.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk

* The Honorable Robert H. Cleland, United States District Judge for the Eastern District of Michigan, sitting by designation.