



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**RESNICK, JUDY S
JUDY RESNICK, ESQ.
2906 BAILEY COURT
FAR ROCKAWAY, NY 11691**

**DHS/ICE Office of Chief Counsel - NEW
970 Broad Street, Room 1300
Newark, NJ 07102**

Name: SANCHEZ, ISAIAS

A 202-049-962

Date of this notice: 7/19/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Snow, Thomas G
Kelly, Edward F.
Adkins-Blanch, Charles K.

Userteam: Docket

**For more unpublished decisions, visit
www.irac.net/unpublished/index**

Falls Church, Virginia 22041

File: A202 049 962 – Newark, NJ

Date: **JUL 19 2018**

In re: Isaias SANCHEZ a.k.a. Sanchez-Hererra a.k.a. Isac Sanchez-Guerrera a.k.a. Isaas Sanchez-Herrera

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Judy S. Resnick, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, was ordered removed from the United States in absentia on November 17, 2017, after not appearing at a hearing. The respondent filed a motion to reopen on November 13, 2017, and appeals from the Immigration Judge's decision dated November 17, 2017, denying the motion. The appeal will be sustained.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that "exceptional circumstances" prevented his appearance at the hearing. See section 240(e)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(e)(1) (stating that the term "exceptional circumstances" refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien). He states in his affidavit that he met with his attorney in September 2017, and misunderstood her instruction to appear at the hearing. According to the respondent, he mistakenly assumed that the hearing was set only for the purpose of his attorney submitting his application for cancellation of removal under section 240A(b)(1) of the Act, 8 U.S.C. § 1229b(b)(1). He further states that his attorney could not reach him on the day of the hearing because the respondent does not own a cell phone. The respondent's witness corroborates his affidavit. In addition, the respondent filed his motion with due diligence, appears to have no incentive to not appear at the hearing, and his nonappearance was likely caused by an honest mistake. In light of the foregoing, we will reopen these proceedings based on "exceptional circumstances."

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the in absentia order of removal is vacated, and these proceedings are reopened and remanded for further proceedings consistent with the foregoing opinion.



FOR THE BOARD