



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
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**Name: GUILLEN ROSA, DOLORES ELE...    A 206-689-897**

**Date of this notice: 2/18/2020**

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:  
Kelly, Edward F.  
Adkins-Blanch, Charles K.  
Couch, Stuart V.

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RC

Falls Church, Virginia 22041

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File: A206-689-897 – Las Vegas, NV

Date: FEB 18 2020

In re: Dolores Elena GUILLEN ROSA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jorge Corral, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, appealed the Immigration Judge's decision, dated July 24, 2019, which denied her motion to reopen proceedings in which she was ordered removed in absentia. The respondent filed a brief on appeal, but no brief was received from the Department of Homeland Security (DHS). The appeal will be sustained, the in absentia order will be rescinded, proceedings will be reopened, and the record will be remanded.

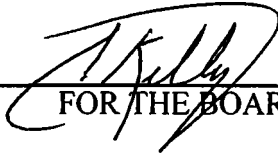
We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues the Immigration Judge erred in denying her timely filed motion to reopen, because her failure to appear was due to exceptional circumstances. We agree with the respondent. The respondent and her attorney did not appear at the removal hearing conducted on June 12, 2019, because the attorney's paralegal mis-calendared the scheduled hearing date (Motion to Reopen at Tab A - paralegal's affidavit). As a result of the paralegal's error, the respondent was not informed of the date and time of the removal hearing, which she failed to attend. The United States Court of Appeals for the Ninth Circuit held an alien's actual and reasonable reliance on an attorney's agent, which resulted in the failure to appear at a hearing, amounted to an "exceptional circumstance" beyond the alien's control. *See Monjaraz-Munoz v. INS*, 327 F.3d 892, 898 (9th Cir. 2003), *amended by* 339 F.3d 1012 (9th Cir. 2003). Similarly, in *Lo v. Ashcroft*, 341 F.3d 934, 935-36, 939 (9th Cir. 2003), the Ninth Circuit concluded the ineffective assistance of counsel and exceptional circumstances existed where an attorney's secretary misinformed the alien about the date of the hearing. In *Matter of Grijalva-Barrera*, 21 I&N Dec. at 472, 473-74 (BIA 1996), the Board found a respondent, who was advised by an employee of his prior attorney, that a continuance had been granted, and he should not appear at his hearing, established that his failure to appear was the result of exceptional circumstances.

Given the particular circumstances of this case, we conclude the respondent met the burden to demonstrate exceptional circumstances for her failure to appear before the Immigration Judge and, thereby, her June 12, 2016, in absentia order of removal is rescinded. *See* section 240(b)(5)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(i).

Given our disposition of the appeal, we decline to address the respondent's remaining appellate arguments. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the in absentia order of removal is rescinded, the proceedings are reopened, and the record is remanded for further proceedings and for the entry of a new decision.

  
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FOR THE BOARD