



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: AGUIRRE-POLANCO, LUIS**

**A 089-817-668**

**Date of this notice: 2/5/2019**

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:  
Adkins-Blanch, Charles K.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A089-817-668 – Los Angeles, CA

Date: **FEB - 5 2019**

In re: Luis Aguirre-POLANCO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mariela Caravetta, Esquire

APPLICATION: Reopening

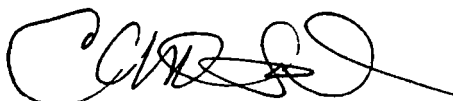
The respondent, a native and citizen of El Salvador, appeals from the October 11, 2018, order of an Immigration Judge denying the respondent's motion to reopen. The Department of Homeland Security (DHS) has not filed a reply to the appeal. The record will be remanded.

On December 1, 2015, the Immigration Judge found that the respondent failed to appear and ordered him removed in absentia. The respondent filed a direct appeal with the Board on September 29, 2017. On December 19, 2017, instead of returning the record to the Immigration Judge because we are precluded from considering direct appeals of an Immigration Judge's entry of an in absentia removal order, we dismissed the appeal as untimely. Subsequently, on September 26, 2018, the respondent filed a motion to reopen his in absentia order with the Immigration Judge. The Immigration Judge issued an order on October 11, 2018, finding that she had no jurisdiction over the motion. However, the Board has now ruled that it lacks jurisdiction over the respondent's direct appeal of the Immigration Judge's December 1, 2015, in absentia order of removal. Therefore, the respondent's appeal of the Immigration Judge's October 11, 2018, decision will be sustained, and the record remanded to the Immigration Judge so that she may adjudicate the respondent's motion to reopen. Section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C); *Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999).

We erred in issuing a decision on the improperly filed appeal, and will vacate that order. Consequently, we will remand the record for the Immigration Judge to adjudicate the motion to reopen.

ORDER: The Board's December 19, 2017, order is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD