



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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**DHS/ICE Office of Chief Counsel - ATL  
180 Ted Turner Dr., SW, Ste 332  
Atlanta, GA 30303**

**Name: HERNANDEZ-REYES, ISELA ES...      A 098-719-936**

**Date of this notice: 12/9/2016**

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:  
Grant, Edward R.  
Mann, Ana  
O'Connor, Blair

Userteam:

Userteam: Docket

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Falls Church, Virginia 22041

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File: A098 719 936 – Atlanta, GA

Date: DEC - 9 2016

In re: ISELA ESMERALDA HERNANDEZ-REYES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Claudia Flower, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed from the United States in absentia on June 1, 2005, after not appearing at a hearing. On November 16, 2015, the respondent and the Department of Homeland Security (DHS) filed a Joint Motion to Reopen Order of Removal. The Immigration Judge denied the motion on April 6, 2016, and the respondent appeals from that decision. The appeal will be sustained.

The Board defers to the factual findings of an Immigration Judge, unless they are clearly erroneous, but it retains independent judgment and discretion, subject to applicable governing standards, regarding pure questions of law and the application of a particular standard of law to those facts. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

We will sustain the appeal and reopen these proceedings. *See Matter of Yewondwosen*, 21 I&N Dec. 1025, 1026 (BIA 1997) (stating that the parties have an important role to play in proceedings and that their agreement on a “proper course of action should, in most instances, be determinative”). The motion to reopen was filed jointly, and the DHS has not filed an opposition to the appeal. In light of the foregoing, the appeal will be sustained, and the motion will be granted.

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.

  

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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ATLANTA, GA

IN THE MATTER OF:

Hernandez Diaz Isela  
IN REMOVAL  
PROCEEDINGS

File No. 098 719 936

ORDER OF THE IMMIGRATION JUDGE

Upon due consideration of the Joint Motion to Reopen filed in the above entitled matter, it is HEREBY ORDERED that the motion be:

   GRANTED   0   DENIED because

   DHS 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 reason stated in the opposition to the motion.

   The motion is untimely per \_\_\_\_\_.

   Other: *There is no legal basis, presenting an explanation provided as to why proceedings*

It is further ORDERED that the case is set for \_\_\_\_\_

*Should be re-opened on an 11 year old order.*

Date

*4/6/16*

Immigration Judge

Certificate of Service

This document was served by: ☒ Mail ☐ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☒ Alien's Atty/Rep ☐ DHS

Date *4/6/16*

By: Court Staff *[Signature]*

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