



**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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Atlanta, GA 30303**

**Name: MARTINEZ-HERNANDEZ, ONESI... A 078-610-503**

**Date of this notice: 10/12/2018**

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:  
Adkins-Blanch, Charles K.  
Snow, Thomas G  
Mann, Ana

Userteam: Docket

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Falls Church, Virginia 22041

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File: A078 610 503 – Atlanta, GA

Date: OCT 12 2018

In re: Onesimo MARTINEZ-HERNANDEZ

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Ellis D. Bingham, Esquire

ON BEHALF OF DHS: Philip D. Curtis  
Assistant Chief Counsel

APPLICATION: Reopening; remand

The respondent is a native and citizen of Mexico who was ordered removed from the United States in absentia on September 7, 2017. He has filed an appeal from the Immigration Judge's decision dated December 19, 2017, denying his motion to reopen. The respondent filed a brief in support of his appeal. He has also submitted additional evidence, some of which is new and we have construed as a motion to remand. In response, the Department of Homeland Security has moved for summary affirmance. The appeal will be sustained.

Upon de novo review, 8 C.F.R. § 1003.1(d)(3)(ii) (2017), and in light of the totality of the circumstances presented in this case, we will reopen this case. The respondent explained, under penalty of perjury, that he and his cousin arrived 35 minutes late for the September 7, 2017, hearing, which was at the new location for the Atlanta Immigration Court. The respondent asserts that they got lost and were not familiar with the new location. His assertion is corroborated by the record in that he appeared for all of his prior hearings at the former location of the Atlanta court, and he showed due diligence in promptly seeking to redress the situation by filing his motion less than three months after the issuance of the in absentia order. The respondent's attorney was present in court, and the respondent is seeking to apply for relief from removal through cancellation of removal. He asserted his intention to appear at all future hearings. Thus, we will sustain the appeal and reopen the proceedings to allow the respondent another opportunity to appear for a hearing before an Immigration Judge. *See Matter of C-R-C-*, 24 I&N Dec. 677 (BIA 2008); *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). Accordingly, the following order shall be entered.

ORDER: The appeal is sustained, the Immigration Judge's September 7, 2017, in absentia order of removal is vacated, proceedings are reopened, the motion is granted, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing.

  
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FOR THE BOARD