



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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**Name: M [REDACTED] -A [REDACTED], C [REDACTED] A [REDACTED]
Riders: [REDACTED]**

A [REDACTED] -347

Date of this notice: 6/4/2019

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:
Kelly, Edward F.
Morris, Daniel
Liebmann, Beth S.

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Falls Church, Virginia 22041

Files: A [REDACTED]-347 – Miami, FL

Date:

JUN - 4 2019

In re: O [REDACTED] A [REDACTED] M [REDACTED] -A [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Claudia M. Garcia, Esquire

APPLICATION: Reopening

The respondents are an adult male and his minor daughter, both natives and citizens of El Salvador, who were ordered removed in absentia on August 22, 2017.¹ The respondent has filed an appeal from the Immigration Judge's decision dated January 17, 2018, denying his motion to reopen. The respondent filed a brief in support of his appeal. The Department of Homeland Security (DHS) did not file a brief in response. The appeal will be sustained.

In a statement accompanying his motion, the respondent stated, under oath, that he arrived at the Miami, Florida, Immigration Court around 7:50 a.m. for his August 22, 2017, hearing and that because of a delay caused by a very long line outside the courthouse, he was not able to appear in the Immigration Judge's courtroom until about 8:15 to 8:20 that morning. By that time, the Immigration Judge already had ordered his removal in absentia. The respondent requested to be given a second opportunity and stated that he never intended to abandon his case and that he wishes to apply for political asylum because of fear to return to El Salvador.

Upon de novo review, 8 C.F.R. § 1003.1(d)(3)(ii), and in light of the circumstances presented, including the facts that the respondent exercised due diligence by filing his motion to reopen within days after the Immigration Judge issued the in absentia order of removal and that the DHS filed no opposition to the respondent's motion or to his appeal, we will sustain the appeal 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.

¹ The male respondent is the lead respondent in this matter. We will refer to him as the "respondent" in this order.

A [REDACTED]-347 et al.

ORDER: The appeal is sustained, the Immigration Judge's August 22, 2017, in absentia order of removal is vacated, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing.



FOR THE BOARD

Board Member Daniel Morris respectfully dissents without opinion.

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