



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: C- , M-

A -591

Date of this notice: 4/1/2019

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:
Kendall Clark, Molly
Adkins-Blanch, Charles K.
Mann, Ana

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED]-591 – Los Angeles, CA

Date:

APR - 1 2019

In re: M [REDACTED] C [REDACTED]-C [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mike Sethi, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's November 7, 2018, decision denying the respondent's motion to reopen seeking rescission of an order of removal entered in absentia. The Department of Homeland Security (DHS) has not filed an opposition to the appeal. The appeal will be sustained.

Upon de novo review, in light of the totality of circumstances presented in this case, including the fact that the respondent exercised diligence in filing a motion to reopen, the DHS did not file an opposition to the motion, the respondent reported to the Immigration and Customs Enforcement (ICE) field office, and as she has alleged past persecution and seeks asylum, she had an incentive to appear to pursue her application in immigration court, and her husband included an affidavit averring neither he nor the respondent received notice of the respondent's hearing, we will sustain the appeal and allow the respondent another opportunity to appear for a hearing. See *Celis-Castellano v. Ashcroft*, 298 F.3d 888, 892 (9th Cir. 2002) (allegations in alien's affidavit supporting motion to reopen must be accepted as true unless inherently unbelievable);¹ *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). Accordingly, the appeal will be sustained, the proceedings will be reopened, and the record will be remanded.

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


FOR THE BOARD

¹ We note that the Immigration Judge, while finding the respondent's husband's affidavit insufficient to rebut the presumption of delivery, did not deem it "inherently unbelievable" (IJ at 2).