



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: TERCERO JACINTO DE LOPEZ, ...    A 215-639-704  
Riders:215-639-705**

**Date of this notice: 8/25/2020**

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:  
Cassidy, William A.

EWB:ED

Userteam: Docket

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*Re*

Falls Church, Virginia 22041

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Files: A215-639-704 – Los Angeles, CA  
A215-639-705

Date:

AUG 25 2020

In re: Candelaria TERCERO JACINTO DE LOPEZ  
Maria Rosalinda LOPEZ TERCERO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Marco A. Jimenez, Esquire

APPLICATION: Reopening

The respondent<sup>1</sup> appeals the November 4, 2019, decision of the Immigration Judge denying the respondent's motion to reopen proceedings in which she was ordered removed in absentia. The appeal will be sustained, proceedings will be reopened, and the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. *See* 8 C.F.R. 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent reiterates that she did not fail to appear for her September 24, 2019, hearing but instead arrived late because of traffic and three automobile accidents that delayed her arrival to 40 minutes after her scheduled hearing time. The respondent appears to argue that she established exceptional circumstances to excuse her tardiness in any event, as the respondent's delayed arrival was due to excessive traffic caused by three separate motor vehicle accidents on her way to the hearing. An alien who merely appears late for a hearing will not be found to have failed to appear, and therefore need not establish lack of proper notice or exceptional circumstances to excuse a failure to appear. *See Perez v. Mukasey*, 516 F.3d 770, 774 (9th Cir. 2008) (holding that alien who arrived two hours late for his immigration hearing, but while Immigration Judge was still in the courtroom, did not fail to appear for that hearing); *see also Luevano-Zapata v. Sessions*, 697 Fed. Appx. 514, 515 (9th Cir. 2017). It is not in dispute that the respondent appeared, albeit late, while the Immigration Judge was still on the bench for master calendar hearings. Consequently, we conclude that the respondent's late arrival does not constitute a failure to appear.

Accordingly, the following order will be entered.

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<sup>1</sup> The respondents are a mother and her minor child. The mother will be referenced as the respondent in this decision.

A215-639-704 et al.

ORDER: The appeal is sustained, the in absentia order of removal is rescinded, the proceedings are reopened, and the record is remanded for further proceedings consistent with the foregoing opinion.

  
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