



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 - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: LANDAVERDE-MORALES, ANA ... A 206-722-187

Date of this notice: 10/17/2017

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.
Kelly, Edward F.
Pauley, Roger

Russell:
Userteam: Docket

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Falls Church, Virginia 22041

File: A206 722 187 – Los Angeles, CA

Date: **OCT 17 2017**

In re: Ana Guadalupe LANDAVERDE-MORALES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeremy R. Frost, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed from the United States in absentia on April 7, 2017, after not appearing at a hearing. She filed a motion to reopen on April 17, 2017, and appeals from the Immigration Judge's decision dated April 18, 2017, denying the motion. The appeal will be sustained.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 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. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that "exceptional circumstances" prevented her appearance at the hearing. See section 240(e)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(e)(1) (stating that the term "exceptional circumstances" refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien). According to the declarations provided with the motion, the respondent's counsel attempted to verify the date of the hearing, and the Immigration Court informed counsel that the respondent did not have a hearing scheduled for April 7, 2017. Counsel's office then instructed the respondent not to appear at the hearing. In denying the motion, the Immigration Judge found significant that the respondent's counsel not did not exercise reasonable care to verify that the court had rescheduled the hearing. We need not address whether counsel exercised reasonable diligence, inasmuch as it is clear that the respondent did not appear at her hearing because she reasonably relied on the instruction from her counsel. We will therefore reopen these proceedings based on "exceptional circumstances." 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 a hearing.


FOR THE BOARD

United States Department of Justice
Executive Office for Immigration Review
Immigration Court - Los Angeles, California

In the Matter of: Ana Guadalupe Landaverde Morales
206-722-187

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's MOTION TO REOPEN, it is HEREBY ORDERED
that the motion be GRANTED ~~DENIED~~ because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent 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 reasons stated in the opposition to the motion.

☐ The motion is untimely per

☒ Other: *R. received oral and written notice of the hearing on 4/7/2017 at 8:30. An order canceling the hearing was never sent. R. has not explained why she did not go to courtroom 14-F.*

Deadlines:

☐ The application(s) for relief must be by: *and check with the court or the clerk, Jai Ashford, about*

☐ The respondent must comply with DHS biometrics instructions by: *whether a hearing was set. R did not act reasonably by failing to inquire from the court in 14-F.*

Re A. O'Connor
Immigration Judge O'Connor

Date *4/18/17*

R. also never asked anyone who had access to the actual file to verify whether a hearing was scheduled. If there is a computer glitch, repeatedly asking someone to check the computer does not constitute reasonable actions given the oral and written notices which were clearly given in this case.

This document was served by: ☒ Mail ☐ Personal Service

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

Date: *4/19/17* By: Court Staff *[Signature]*