



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: HERNANDEZ-YANEZ, ARTEMIO**

**A 205-841-720**

**Date of this notice: 5/8/2020**

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:  
Mullane, Hugh G.  
Grant, Edward R.  
Mann, Ana

User team: Docket

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Falls Church, Virginia 22041

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File: A205-841-720 – San Diego, CA

Date: MAY - 8 2020

In re: Artemio HERNANDEZ-YANEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alan Michael Anzarouth, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's April 20, 2018, decision denying his April 5, 2018, motion to reopen and rescind an order of removal entered in absentia on October 11, 2017. The Department of Homeland Security has not responded to the appeal. The appeal will be sustained, the in absentia order will be rescinded, and the record will be remanded for further proceedings consistent with this opinion.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that the Immigration Judge erred in concluding he did not establish exceptional circumstances supporting reopening of his removal proceedings (Notice of Appeal). In his statements submitted with his motion to reopen and Notice of Appeal, the respondent maintains that he arrived after his scheduled hearing time of 8:00 a.m. due to "exceptionally heavy traffic" and difficulty finding parking (Respondent's Motion at Attachments; Notice of Appeal). At around 8:09 a.m., the respondent spoke with his attorney, who was present before the Immigration Judge and informed the Immigration Judge that the respondent would arrive within approximately 5 minutes. The respondent parked his car at 8:22 a.m., passed through the court's lobby at around 8:25 a.m., and was informed upon arrival in the courtroom that the Immigration Judge had left the bench approximately 2 to 3 minutes earlier.

In light of the foregoing, we agree with the respondent that he did not fail to appear at his hearing. We recognize the Immigration Judge's reasons for proceeding in absentia, including the inconvenience to the court caused by the respondent's delay when considering the court's tight schedules and high volume of work. Nevertheless, the respondent arrived only around 25 minutes late, was in communication with counsel who was present before the Immigration Judge while traveling to the hearing, and, through his attorney, advised the Immigration Judge of the difficulties he encountered and his imminent arrival at the Immigration Court. This matter is analogous to cases where the respondent's late appearance did not constitute a failure to appear when considering the circumstances as a whole. *See Jerezano v. INS*, 169 F.3d 613, 615 (9th Cir. 1999) (finding that, although an Immigration Judge need not linger on the bench, where a respondent is late, but not so late, that the Immigration Judge cannot take up his case, treating the respondent's slight tardiness as a failure to appear is an abuse of discretion); *see also Perez v. Mukasey*,

516 F.3d 770, 774 (9th Cir. 2008) (finding that an alien who arrived 2 hours late for his immigration hearing did not fail to appear for his hearing when considering the specific facts and circumstances present in that case). Thus, given the circumstances in this case, we conclude that the respondent did not fail to appear at his hearing, but rather appeared excusably late, and we will reopen proceedings and remand the record to the Immigration Judge.

Accordingly, the following order will be entered.

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

  
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FOR THE BOARD