



## U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals Office of the Clerk

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Name: HERNANDEZ-REYES, ISELA ES...

A 098-719-936

Date of this notice: 12/9/2016

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr Chief Clerk

conne Carr

**Enclosure** 

Panel Members: Grant, Edward R. Mann, Ana O'Connor, Blair

tashom.

Userteam: Docket

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J. J.

Falls Church, Virginia 22041

File: A098 719 936 - Atlanta, GA

Date:

DEC - 9 2016

In re: ISELA ESMERALDA <u>HERNANDEZ-REYES</u>

IN REMOVAL PROCEEDINGS

**APPEAL** 

ON BEHALF OF RESPONDENT: Claudia Flower, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of El Salvador, was ordered removed from the United States in absentia on June 1, 2005, after not appearing at a hearing. On November 16, 2015, the respondent and the Department of Homeland Security (DHS) filed a Joint Motion to Reopen Order of Removal. The Immigration Judge denied the motion on April 6, 2016, and the respondent appeals from that decision. The appeal will be sustained.

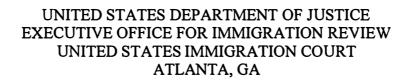
The Board defers to the factual findings of an Immigration Judge, unless they are clearly erroneous, but it retains independent judgment and discretion, subject to applicable governing standards, regarding pure questions of law and the application of a particular standard of law to those facts. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

We will sustain the appeal and reopen these proceedings. See Matter of Yewondwosen, 21 I&N Dec. 1025, 1026 (BIA 1997) (stating that the parties have an important role to play in proceedings and that their agreement on a "proper course of action should, in most instances, be determinative"). The motion to reopen was filed jointly, and the DHS has not filed an opposition to the appeal. In light of the foregoing, the appeal will be sustained, and the motion will be granted.

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 further proceedings consistent with the foregoing opinion.

FOR THE BOARD



IN THE MATTER OF:
Hernandez Diaz Isela ) File No. 098 719 936 IN REMOVAL ) PROCEEDINGS )
ORDER OF THE IMMIGRATION JUDGE
Upon due consideration of the Joint Motion to Reopen filed in the above entitled matter, it is HEREBY ORDERED that the motion be:
GRANTED DENIED because
DHS 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 reason stated in the opposition to the motion.
The motion is untimely per
Nother: There is no Irgai Wasis, Masoning on  explanation provided as to why proceeding s  It is furthered ORDERED that the case is set for  6 hould be 12-copied on on 11 year old well.
Date Immigration Judge
Certificate of Service This document was served by: [ ] Mail [ ] Personal Service To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS Date By. Court Staff