

SEP 07 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSA ELENA CONTRERAS-DE
ELENA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-71321

Agency No. A070-105-480

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted August 23, 2010**

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

Rosa Elena Contreras-De Elena, a native and citizen of Colombia, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

appeal from an immigration judge's decision denying her motion to reopen exclusion proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand.

The BIA dismissed Contreras-De Elena's appeal as moot because she departed during the pendency of her appeal. In an intervening opinion, *Coyt v. Holder*, 593 F.3d 902, 907 (9th Cir. 2010), this court held that a petitioner's physical removal by the government while his motion to reopen was pending did not constitute withdrawal of the motion. We remand for the BIA to reconsider whether Contreras-De Elena's appeal is withdrawn in light of our holding in *Coyt*.

In light of our disposition, we need not reach Contreras-De Elena's remaining contentions.

PETITION FOR REVIEW GRANTED; REMANDED.