

JAN 06 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ADONAY REMBERTO ORTIZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-74882

Agency No. A090-137-988

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Adonay Remberto Ortiz, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his motion to reopen removal

* 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).

proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. *Ghahremani v. Gonzales*, 498 F.3d 993, 999 (9th Cir. 2007) (court has jurisdiction over mixed question of law and fact, as long as the relevant underlying facts are not disputed). We review for abuse of discretion the denial of a motion to reopen. *Lo v. Ashcroft*, 341 F.3d 934, 937 (9th Cir. 2003). We grant the petition for review and remand.

The BIA abused its discretion in denying Ortiz's motion for failure to comply with the requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), where it is undisputed that Ortiz's attorneys' staff told him that he need not appear at the January 19, 2006, hearing and where Ortiz explained why he did not file a disciplinary complaint against his attorneys. *See Lo*, 341 F.3d at 937-38 (strict compliance not required where it is undisputed that attorney's office staff told petitioner the wrong hearing date, where petitioner explained absence of bar complaint, and where *Lozada*'s policy goals to discourage baseless claims and collusion were met).

We therefore grant the petition for review and remand to the BIA for further proceedings consistent with this disposition.

PETITION FOR REVIEW GRANTED; REMANDED.