

APR 21 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

OLIVIA HERNANDEZ-GUERRERO,  
  
Petitioner,  
  
v.  
  
ERIC H. HOLDER, Jr., Attorney General,  
  
Respondent.

No. 07-70353

Agency No. A092-937-028

MEMORANDUM\*

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

Submitted April 16, 2009\*\*  
Pasadena, California

Before: CANBY, RAWLINSON and N.R. SMITH, Circuit Judges.

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

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

Olivia Hernandez-Guerrero (Hernandez-Guerrero) petitions for review of the Board of Immigration Appeals' (BIA) dismissal of her appeal of the Immigration Judge's denial of her motion to reopen her removal proceedings. Hernandez-Guerrero specifically sought to rescind the removal order entered against her *in absentia*.

The BIA did not abuse its discretion in denying Hernandez-Guerrero's motion to reopen. Hernandez-Guerrero overslept and missed her removal hearing as a result of her late-night work schedule and prescription medication. This evidence does not compel the finding that Hernandez-Guerrero's failure to appear was the result of "exceptional circumstances." *See Celis-Castellano v. Ashcroft*, 298 F.3d 888, 891-92 (9th Cir. 2002) (concluding that the BIA acted within its discretion in denying a motion to reopen supported only by general evidence of an asthma attack).

Given our disposition, we need not address Hernandez-Guerrero's request for cancellation of removal.

**PETITION DENIED.**