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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PERVINDER SINGH,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-70686

Agency No. A096-151-086

MEMORANDUM*

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

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Pervinder Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s order denying his motion to reopen removal proceedings

* 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).

conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand.

The BIA abused its discretion in denying Singh's motion to reopen where it relied on Singh's failure to respond to attorney Dhariwal's November 13, 2006, supplemental response to Singh's allegation of ineffective assistance but the record demonstrates that the supplemental response was not served on Singh. *See Singh v. I.N.S.*, 295 F.3d 1037, 1039 (9th Cir. 2002) (the BIA's denial of a motion to reopen shall be reversed if it is "arbitrary, irrational, or contrary to law"). We remand for the agency to provide Singh with an opportunity to respond to Dhariwal's November 13, 2006, supplemental response.

PETITION FOR REVIEW GRANTED; REMANDED.