

OCT 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIA SENaida SANTOS-MENDEZ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 08-73712

Agency No. A071-575-872

MEMORANDUM*

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

Argued and Submitted October 10, 2012
Pasadena, California

Before: FERNANDEZ and BERZON, Circuit Judges, and HERNANDEZ, District
Judge.**

Maria Senaida Santos-Mendez, a native and citizen of Guatemala, petitions
for review of the Board of Immigration Appeals’ (“BIA”) order dismissing her
appeal from an immigration judge’s denial of her 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 Honorable Marco A. Hernandez, U.S. District Judge for the
District of Oregon, sitting by designation.

proceedings conducted *in absentia*. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. Celis-Castellano v. Ashcroft, 298 F.3d 888, 890 (9th Cir. 2002). We grant the petition and remand for further proceedings.

The BIA abused its discretion in determining that Santos-Mendez did not provide evidence of exceptional circumstances to excuse her failure to appear. See Singh v. INS, 213 F.3d 1050, 1053 (9th Cir. 2000). Santos-Mendez submitted a declaration stating that on the day of the hearing, she suffered from an extreme headache, vomiting, dizziness, and weakness. There is evidence in the record that the symptoms she suffered on that day were consistent with hydrocephalus—a potentially life-threatening pathology. Santos-Mendez also provided evidence that she was later admitted to the hospital, was diagnosed with hydrocephalus, and underwent surgery to relieve the pressure on her brain. Her doctor wrote a letter requesting that Santos-Mendez be excused from earlier appointments and obligations, presumably because of the seriousness of her condition. Under these particular facts, Santos-Mendez has provided evidence of exceptional circumstances to excuse her failure to appear.

PETITION FOR REVIEW GRANTED; REMANDED.