

JAN 27 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZILI JIN,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-72745

Agency No. A089-886-779

MEMORANDUM*

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

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Zili Jin, a native and citizen of China, 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 proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We grant the petition for review and we remand.

The agency abused its discretion in denying Jin's motion to reopen for failure to file a complaint against his attorney in compliance with the procedural requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). Jin's failure to attend his hearing was due to an exceptional circumstance, because his attorney told him that he did not need to appear. *See* 8 C.F.R. § 1003.23(b)(4)(ii). Filing a complaint against the attorney was not necessary because ineffective assistance of counsel is plain on the face of the record, where Jin's attorney has admitted his errors in a declaration under penalty of perjury. *See Correa-Rivera v. Holder*, 706 F.3d 1128, 1133 (9th Cir. 2013); *Lo v. Ashcroft*, 341 F.3d 934, 937 (9th Cir. 2003).

Accordingly, we grant the petition for review, reverse the denial of Jin's motion to reopen, and remand to the BIA for further proceedings consistent with this opinion.

PETITION FOR REVIEW GRANTED; REMANDED.