

FILED

UNITED STATES COURT OF APPEALS

SEP 3 2026

FOR THE NINTH CIRCUIT

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

FERNANDA ESTEPHANI BELTRAN
RIZO; M. G. B.,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-3735

Agency Nos.
A249-309-836
A249-310-191

MEMORANDUM*

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

Argued and Submitted June 8, 2026
Seattle, Washington

Before: HAWKINS, W. FLETCHER, and TUNG, Circuit Judges.
Dissent by Judge TUNG.

Petitioner Fernanda Estephani Beltran Rizo and her daughter, natives of Guatemala, petition for review of a decision of the Board of Immigration Appeals (“BIA”) affirming the decision of an Immigration Judge (“IJ”) deeming their application for relief waived and abandoned for failure to complete biometrics requirements in a timely fashion. We have jurisdiction under 8 U.S.C. § 1252 and grant the petition.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Because the BIA agreed with the IJ's decision while "add[ing] its own reasoning, we review the decision of the BIA and those parts of the IJ's decision upon which it relies." *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1027–28 (9th Cir. 2019). We review for abuse of discretion an IJ's determination that a petitioner abandoned an application for relief. *Gonzalez-Veliz v. Garland*, 996 F.3d 942, 948 (9th Cir. 2021). "While the agency is not require[d] . . . to discuss every piece of evidence . . . , remand is required where there is any indication that the BIA did not consider all of the evidence before it. Such indications include misstating the record and failing to mention highly probative or potentially dispositive evidence." *Diaz v. Bondi*, 129 F.4th 546, 554 (9th Cir. 2025) (internal quotations and citations omitted).

Failure to provide biometrics information within the time allowed "constitutes abandonment of the application . . . unless the applicant demonstrates that such failure was the result of good cause." 8 C.F.R. § 1003.47(c). It is uncontested that Petitioner failed to provide her biometrics information before her asylum hearing on December 3, 2024. At the hearing, Petitioner and her counsel offered extensive conflicting accounts to the IJ as to the cause of the failure. Petitioner alleged that her counsel told her "[t]o not keep bothering him" and stopped communicating with her. Her counsel alleged that Petitioner was uncommunicative and failed to return his calls. We do not resolve the conflict

between the accounts offered by Petitioner and her counsel.

It is uncontested that at a hearing on May 9, 2024, the IJ told Petitioner that she needed to complete her biometrics requirement before her December 3 hearing, stating, “Your attorney will work on getting an appointment for you.” It is also uncontested that at the conclusion of that hearing, Petitioner’s attorney retained the single copy of instructions for completing the biometrics requirement that was provided to Petitioner.

What counsel later did with those instructions is contested. Counsel stated at the December 3 hearing, “[W]e’ve been trying to contact the respondent, and we’ve mailed out the instructions for the biometrics.” The IJ assumed that counsel meant that the instructions had been mailed to Petitioner, even though in context the phrase “mailed out” could mean that the instructions had been mailed to a third party rather than to her. Assuming that counsel meant that the instructions had been mailed to her, the IJ said to Petitioner, “[Y]our lawyer says that you were mailed out instructions.” Petitioner responded, “No, they didn’t send me anything.”

Consistent with the IJ’s statement to Petitioner that her counsel would work on securing a biometrics appointment, it is uncontested that counsel sent a letter requesting a biometrics appointment. It is also uncontested that he sent it to the wrong agency. Indeed, the government specifically conceded the point at oral

argument. Counsel sent it to “EOIR Seattle Immigration Court,” rather than to the United States Citizenship and Immigration Service. There is no indication in the record that counsel received any response to his misaddressed letter, or that he took any other steps to secure a biometrics appointment.

It is uncontested that counsel moved to withdraw as Petitioner’s attorney the day before Petitioner’s December 3 asylum hearing. After the IJ denied that motion as untimely, counsel appeared at the hearing the next day. The transcript shows that counsel made no effort to represent his client’s interests at the hearing, and that he offered no explanation as to why he had written to the wrong agency after retaining the biometrics instructions at the conclusion of the previous hearing. Counsel orally renewed his motion to withdraw, and left mid-hearing as soon as his motion was granted.

The IJ made no inquiry concerning counsel’s failure to write to the correct agency and failure to take any follow-up measures. The BIA did not address petitioner’s arguments as to these failures. Petitioner had not previously sought a continuance to in order to fulfill the biometrics requirement.

Based on the uncontested facts outlined above, we conclude that Petitioner has established good cause for failure to timely complete her biometrics requirement. On remand, Petitioner should be afforded a reasonable period in which to complete biometrics requirement before further proceedings on the merits

of her application for relief. The motion for stay of removal (Dkt. 3) is granted pending issuance of the mandate.

Petition **GRANTED.**

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Beltran Rizo v. Blanche, Case No. 25-3735

TUNG, Circuit Judge, dissenting:

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The panel majority grants the petition by crediting only Petitioner's presentation of the facts while disregarding the Immigration Judge's resolution of the facts against her. If one were to accept only the majority's version of events, the takeaway would be that Petitioner's deadbeat lawyer caused Petitioner to miss a critical deadline for seeking asylum: he was supposed to get a biometrics appointment for Petitioner but did not; he sent a letter requesting a biometrics appointment to the wrong agency; he took no other steps to secure an appointment on Petitioner's behalf; he sought to withdraw from representing his client; and he left mid-hearing when the motion was granted.

The majority presents these "facts" as "uncontested." Op. at 4. Except that they are not. While the Immigration Judge told the Petitioner that her attorney "will work on getting an appointment," the judge also told the Petitioner that failure to complete the process by the next hearing would result in her application being deemed abandoned and stressed that "it's important that [she] do this." AR 83; see *Gonzalez-Veliz v. Garland*, 996 F.3d 942, 948 (9th Cir. 2021) (stating that federal regulation clearly "places the burden on the alien" to "comply with the requirements to provide biometrics") (quoting 8 C.F.R. § 1003.47(c)). Petitioner stated that she understood. AR 81. According to the attorney's testimony, he had

“been trying to contact the [Petitioner]” and had “mailed out the instructions for the biometrics.” AR 88. At the hearing, the attorney stated that he “tried calling her last week and she hung up on [him].” *Id.* He further stated that she hasn’t been able to “communicate with her” and that she has “been uncooperative.” *Id.* The attorney stated that “there’s just really not much I have been able to do towards communicating with her. And so, today I’m showing up here to file a motion to withdraw in hopes that she finds somebody to protect her.” *Id.* The attorney added that Petitioner’s “phone does not allow for us to leave messages. So, we would only communicate with her through either emails or letters. And we have been trying to communicate with her. She knew that we have been calling based on, I believe her caller ID.” AR 89. And the attorney concluded that “if [Petitioner] was really waiting for our instructions, she wouldn’t have hung up on me last week. But your honor, I’m going to not say much more without her waiving her attorney-client privilege.” AR 90.

The majority does not present this side of the facts, so one is left with the impression that the attorney was neglectful. But as we see, that impression distorts the record. To be sure, Petitioner contests the attorney’s statements, but the Immigration Judge resolved that dispute against the Petitioner, concluding that she had no good cause for failing to timely complete her biometrics before the hearing. AR 4, 100–01. Plus, even if we credited Petitioner’s version of events, she would

still lack good cause. Petitioner asserted that her attorney told her—“months ago”—that he would not be representing her anymore. AR 90. Thus, even accepting that assertion as true, Petitioner still had months to complete her biometrics after her attorney purportedly abandoned her. Petitioner provides no reason why she failed to complete her biometrics during that time. Nor does she describe any efforts made to do so. Alas, here too the majority makes no mention of this dispositive point. On this record, I cannot find that the Immigration Judge abused his discretion in denying relief.

For these reasons, I would deny the petition and so respectfully dissent.