

126 Fed.Appx. 801, 2005 WL 663511 (C.A.9)
(Not Selected for publication in the Federal Reporter)
(Cite as: 126 Fed.Appx. 801, 2005 WL 663511 (C.A.9))

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
 Ninth Circuit.
 Juan Esteban VALENCIA-BLONDON, Petitioner,
 v.
 Alberto GONZALES,^{FN*} United States Attorney
 General Respondent.

^{FN*} Alberto Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed. R.App. P. 43(c)(2).

Nos. 03-74504, 03-72298.
 Submitted Feb. 8, 2005.^{FN**}

^{FN**} This panel unanimously finds this case suitable for decision without oral argument. See Fed. R.App. P. 34(a)(2).

Decided March 10, 2005.

Background: Alien filed petition challenging order by the Board of Immigration Appeals (BIA), 2003 WL 23521918, accepting his withdrawal of appeal and BIA's denial of his subsequent motion to reconsider and/or reopen.

Holding: The Court of Appeals held that alien's mo-

tion should not have been dismissed as time-barred under 30-day limitations period applicable to motions to reconsider.

Vacated and remanded.

West Headnotes

Aliens, Immigration, and Citizenship 24 ⚡585(1)

24 Aliens, Immigration, and Citizenship

24VII Asylum, Refugees, and Withholding of Removal

24VII(F) Administrative Procedure

24k583 Reopening, Reconsideration, or Remand

24k585 Time Limitations

24k585(1) k. In General. Most Cited

Cases

(Formerly 24k54(5))

Alien's motion to "reconsider and/or reopen" was properly construed as motion to reopen, and thus should not have been dismissed as time-barred under 30-day limitations period applicable to motions to reconsider, where motion presented new factual information bearing on alien's asylum application. Immigration and Nationality Act, § 240(c), 8 U.S.C.A. § 1229a(c).

*801 Thomas Hutchins, Alexandria, VA, for Petitioner Juan Esteban Valencia-Blandon.

Regional Counsel, Western Region Immigration & Naturalization Service, Laguna Niguel, CA, Ronald E. Lefevre, Chief Legal Officer, Office of the District Counsel, Department of Homeland Security, San Francisco, CA, Jennifer L. Lightbody, Esq., Jennifer

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Paisner, U.S. Department of Justice, Washington, DC,
 for Respondent.

On Petition for Review of a Final Order of the Board
 of Immigration Appeals. Agency No. A79-807-450.

*802 Before: GOODWIN, CUDAHY ^{FN***} and
 RYMER, Circuit Judges.

^{FN***} The Honorable Richard D. Cudahy,
 Senior Circuit Judge for the United States
 Court of Appeals for the Seventh Circuit,
 sitting by designation.

ORDER ^{FN****}

^{FN****} This disposition is not appropriate
 for publication and may not be cited to or by
 the courts of this circuit except as provided
 by Ninth Circuit Rule 36-3.

**1 Petitioner, Columbian national Juan Esteban
 Valencia-Blandon, who was removed by the Depart-
 ment of Homeland Security (DHS) following an im-
 migration judge's denial of his application for asylum
 in 2003, brings two separate petitions for relief. He
 challenges (1) an order by the Board of Immigration
 Appeals (BIA) accepting his withdrawal of appeal
 (petition No. 03-72298) and (2) the BIA's denial of his
 subsequent Motion to Reconsider and/or Reopen (pe-
 tition No. 03-74504).

Taking petitioner's second claim first (petition
 No. 03-74504), the government concedes that, since
 the compound Motion to Reconsider and/or Reopen
 presented new factual information bearing on Valen-
 cia-Blandon's asylum application, the Motion should
 have been construed as a Motion to Reopen and thus
 should *not* have been dismissed as time-barred under
 the 30-day limitations period applicable to Motions to
 Reconsider. See 8 U.S.C. § 1229a(c); Iturribarria v.

I.N.S., 321 F.3d 889, 895-97 (9th Cir.2003). The BIA's
 mischaracterization and denial of the Motion was thus
 an abuse of discretion. Iturribarria 321 F.3d at 897.
 We therefore vacate the BIA's ruling that the Motion
 was time-barred and remand the case so that the BIA
 may consider the merits of petitioner's Motion to
 Reopen. We also pause to note that, given the new
 information presented in the Motion, the BIA should
 seriously consider reopening petitioner's case.

With respect to petitioner's claim regarding his
 Withdrawal of Appeal (petition No. 03-72298), that
 claim becomes moot if the BIA elects to grant peti-
 tioner's Motion to Reopen. Accordingly, we will defer
 submission of petition No. 03-72298 pending the
 BIA's disposition of petitioner's Motion to Reopen.
 Counsel are hereby instructed to file a status report
 advising this Court of the BIA's decision within 60
 days of issuance of this order, or whenever the BIA
 renders its decision on the Motion to Reopen.

Finally, while petitioner's request that he be lo-
 cated and returned to the United States at government
 expense appears somewhat extraordinary, we will
 permit petitioner to return to the United States on his
 own pending final resolution of his asylum application
 and related petitions. See, e.g., Singh v. Waters, 87
F.3d 346, 350 (9th Cir.1996). The government is
 hereby directed to permit petitioner to return to the
 United States for this limited purpose.

VACATED AND REMANDED.

C.A.9,2005.
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