

SEP 28 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SIMON BARRAGAN-JUAREZ,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 02-70030

Agency No. A91-818-667

MEMORANDUM*

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

Submitted September 24, 2007***

Before: CANBY, TASHIMA and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Simon Barragan-Juarez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming without opinion an immigration judge's ("IJ") decision denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review questions of law de novo. *See Lin v. Gonzales*, 473 F.3d 979, 981 (9th Cir. 2007). We grant the petition for review and remand.

The IJ erred in concluding that Barragan-Juarez was ineligible to file a motion to reopen removal proceedings on the ground that he departed the United States after he was ordered removed in absentia. *See id.* at 982 (holding that 8 C.F.R. § 1003.23(b)(1) does not preclude jurisdiction over motions to reopen filed by petitioners who had been lawfully removed after the completion of immigration proceedings and then reentered illegally).

The IJ also erred in determining that the original removal order was automatically reinstated upon Barragan-Juarez's illegal reentry into the United States. *See id.* at 982-83 (noting that before the prior order can be reinstated, an immigration officer must comply with the requirements set forth in 8 C.F.R. § 241.8).

Accordingly, we remand to the BIA with instructions to remand to the IJ for further proceedings consistent with this disposition.

PETITION FOR REVIEW GRANTED; REMANDED.