

United States Court of Appeals For the First Circuit

No. 00-1771

MARK SAAKIAN,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR REVIEW OF A DECISION OF THE
BOARD OF IMMIGRATION APPEALS

Before

Torruella, Chief Judge,
Stahl, Senior Circuit Judge,
and Lipez, Circuit Judge.

Christopher W. Drinan

STAHL, Senior Circuit Judge. After being ordered deported in absentia, petitioner Saakian filed with the Immigration Judge (IJ) a motion to reopen on the basis of ineffective assistance of counsel. The IJ denied his motion, and Saakian timely appealed that decision to the Board of Immigration Appeals (BIA), which dismissed his appeal. Saakian petitions us to review the BIA's dismissal, contending that he was denied procedural due process. We agree and grant the petition.

I. BACKGROUND

Saakian, a native and citizen of Armenia, entered the United States on November 13, 1993, as a non-immigrant visitor for pleasure. He was accompanied by his father and stepmother. The family's visas authorized them to remain in the United States until May 12, 1994. On January 12, 1994, Saakian's

allowed by his visa. This Order was served on Saakian on October 16, 1996, and it directed him to appear before an IJ on November 20, 1996. When Saakian appeared on that date, he was told to return for a full hearing on March 19, 1997.

Saakian thereafter retained Connie Frentzos, of the Khmer Humanitarian Organization in Los Angeles, to represent him in the proceeding.

¹In addition to his direct appeal of the IJ's denial of his motion

the Lozada

Aliens

[were] not available and could not have been discovered or presented at the former hearing.'" Iavorski v. INS, 232 F.3d

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against his prior counsel. Id. at 604-05. The three

arbitrarily." Ontiveros-Lopez v. INS, 213 F.3d 1121, 1124-25
(9th Cir. 2000) (internal citations omitted); see also Castillo-
Perez

not been examined, despite Saakian's persistent efforts to have it heard. This violates due process. See

appeal and remanded to the IJ for further proceedings. Id.
Thus, in similar circumstances, the alien not only had his
appeal heard on the merits, but he was successful.

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For the reasons stated, we GRANT Saakian's petition for
review,