

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

MALINDA DAVIES; OROLOBOFAA
DAVIES,

Petitioners,

v.

U.S. IMMIGRATION & NATURALIZATION
SERVICE,

Respondent.

No. 00-1773

On Petition for Review of an Order
of the Board of Immigration Appeals.
(A29-006-868, A29-006-870)

Argued: May 8, 2001

Decided: June 5, 2001

Before WIDENER and MOTZ, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Petition granted, reversed, and remanded by unpublished per curiam
opinion.

COUNSEL

ARGUED: Diane Elizabeth McHugh-Martinez, LAW OFFICE OF
MCHUGH-MARTINEZ, Washington, D.C., for Petitioners. David
Michael McConnell, Office of Immigration Litigation, Civil Division,
UNITED STATES DEPARTMENT OF JUSTICE, Washington,
D.C., for Respondent. **ON BRIEF:** David W. Ogden, Assistant Attor-

ney General, Allen W. Hausman, Senior Litigation Counsel, James A. Hunolt, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Malinda and Orolobofaa Davies seek review of an order of the Board of Immigration Appeals denying their motion to reopen their case.

The Petitioners, who have been in this country legally since they entered in 1985 as the wife and daughter of a now deceased diplomat, contend that the Board abused its discretion in denying their motion to reopen after they had failed to attend their immigration hearing. When an immigration judge and the Board denied an earlier motion to reopen, the Petitioners filed the motion to reopen at issue here. They asserted that prior counsel, who had represented them since the beginning of this case, had been ineffective in numerous respects. The Board denied the motion, finding it was procedurally barred and did not comply with the requirements for making an ineffective assistance claim set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

We have carefully considered the briefs of the parties, oral argument of counsel, the record in the case, and relevant legal authorities. Under the unusual facts and exceptional circumstances presented in this case, we conclude that the Board abused its discretion in denying Petitioners' motion to reopen. Given those facts and circumstances, the time and numerical requirements that the Board found procedurally barred consideration of the motion were equitably tolled. Further-

more, the record reveals that the Petitioners substantially complied with the requirements set forth in *Lozada* for establishing that ineffective assistance prevented their attendance at the hearing. Accordingly, we grant the petition for review, reverse the denial of the motion to reopen, and remand the case to the Board so that it may consider the merits of Petitioners' motion to reopen.

PETITION GRANTED, REVERSED, AND REMANDED