

JUN 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BABITA KAUR,  
  
Petitioner,  
  
v.  
  
ERIC H. HOLDER Jr., Attorney General,  
  
Respondent.

No. 05-75684  
  
Agency No. A076-861-874  
  
MEMORANDUM\*

BABITA KAUR,  
  
Petitioner,  
  
v.  
  
ERIC H. HOLDER Jr., Attorney General,  
  
Respondent.

No. 05-76793  
  
Agency No. A076-861-874

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

Argued and Submitted June 11, 2009  
San Francisco, California

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

Before: TROTT, McKEOWN and IKUTA, Circuit Judges.

Kaur petitions for review of an order by the Board of Immigration Appeals (“BIA”) affirming a decision by an Immigration Judge (“IJ”) denying her motion to reopen her unsuccessful attempt to secure asylum. She alleges that her failure to appear at the hearing where her application was denied was the result of ineffective assistance of counsel amounting to exceptional circumstances warranting reopening of her case. See 8 U.S.C. § 1229a(b)(5)(c)(1).

We review the BIA’s denial of a motion to reopen under the abuse of discretion standard. Singh v. Ashcroft, 367 F.3d 1182, 1185 (9th Cir. 2004).

Factual findings must be upheld “unless the evidence compels a contrary result.” Monjaraz-Munoz v. INS, 327 F.3d 892, 895 (9th Cir. 2003).

Based upon (1) a signed letter from the attorney she accused of ineffective assistance and (2) corroborating materials from him controverting her allegations, buttressed by a material, glaring inconsistency between her I-130 application and her visa petition and biographic form (form G325A) regarding her husbands, the BIA determined that Kaur’s credibility concerning her allegations was suspect and that she had not carried her substantial burden of establishing ineffective assistance of counsel. We decline to consider Kaur’s argument with respect to the state bar

disciplinary record of her previous attorney because she did not raise the issue before the BIA.

The factual record supports the BIA's decision and thus, its decision did not constitute an abuse of discretion.

PETITION DENIED.