

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RUFINO PEREZ ROMA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-70068

Agency No. A073-839-998

MEMORANDUM\*

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

Submitted November 17, 2009\*\*

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Rufino Perez Roma, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his motion to reopen proceedings held

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

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

in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

Perez Roma failed to exhaust his contention that he did not appear at his removal proceedings because of exceptional circumstances. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

To the extent Perez Roma challenges the BIA's June 16, 2005, order vacating its prior order and remanding the administrative record to the IJ, we lack jurisdiction because this petition for review is not timely as to the 2005 order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

The IJ did not abuse her discretion in denying Perez Roma's motion to reopen because written notice of the hearing was mailed to the most recent address provided by Perez Roma, *see* 8 U.S.C. § 1229a(b)(5)(A), and he failed to present any new evidence to demonstrate the requisite hardship, *see* 8 C.F.R. § 1003.23(b)(3) (providing that a motion to reopen "shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material").

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**