

DEC 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>J. PATROCINIO ALFARO PEREZ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 07-72092

Agency No. A095-293-198

MEMORANDUM*

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

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

J. Patrocinio Alfaro Perez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings

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

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

conducted in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252.

Reviewing for abuse of discretion, *Garcia v. INS*, 222 F.3d 1208, 1209 (9th Cir. 2000) (per curiam), we deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Alfaro Perez's motion to reopen because the record reflects that notice of the April 14, 2006, hearing was mailed to the address of record of Alfaro Perez's counsel. *See* 8 U.S.C.

§ 1229(a)(2)(A) (notice may be served by mail on alien or alien's counsel of record); *see also Garcia*, 222 F.3d at 1209 (notice to counsel of record constitutes notice to alien); *Farhoud v. INS*, 122 F.3d 794, 796 (9th Cir. 1997) (actual receipt of notice by alien not required to satisfy due process).

To the extent Alfaro Perez contends that he failed to appear at his hearing due to extraordinary circumstances, we lack jurisdiction because Alfaro Perez failed to raise the issue before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

We do not consider the declaration of Albert Castro attached to Alfaro Perez's opening brief. *See* 8 U.S.C. § 1252(b)(4)(A); *Fisher v. INS*, 79 F.3d 955,

963 (9th Cir. 1996) (en banc).

Respondent's motion to strike is denied as moot.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.