

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 16 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VICTOR RAKOVITCH SERGEYVITCH,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 08-71078

Agency No. A079-523-963

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.

Victor Rakovitch Sergeyvitch, a native of Kazakhstan and citizen of Russia, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his

* 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).

motion to reopen proceedings held in absentia. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), we deny the petition for review.

The IJ did not abuse his discretion in denying Sergeyvitch's motion to reopen because written notice of the hearing was mailed to the most recent address provided by Sergeyvitch. *See* 8 U.S.C. § 1229a(b)(5)(A); *see also In re Grijalva*, 21 I. & N. Dec. 27, 32-34 (BIA 1995) (proof of actual service or receipt of the notice by the respondent is not required).

The BIA properly concluded that petitioner failed to show exceptional circumstances for his absence on account of ineffective assistance by a non-attorney because he failed to comply with the requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and the ineffective assistance is not plain on the face of the record. *See Reyes v. Ashcroft*, 358 F.3d 592, 597-99 (9th Cir. 2004).

Contrary to Sergeyvitch's assertion, the BIA acted within its regulatory authority in reviewing the IJ's factual findings for error. *See* 8 C.F.R. § 1003.1(d)(3)(I).

We grant Petitioner's motion to expedite the petition for review.

PETITION FOR REVIEW DENIED.

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FISHER, Circuit Judge, concurring:

I concur in the result reached by the majority.