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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERMAN YOVANY VENTURA
CANALES,

Petitioner,

v.

ERIC H. HOLDER, Attorney General,

Respondent.

No. 07-72411

Agency No. A070-927-942

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

German Yovany Ventura Canales, a native and citizen of Honduras, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") order denying his motion to reopen deportation proceedings conducted in absentia. Our jurisdiction is

* 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).

governed by 8 U.S.C. § 1252. We review de novo questions of law, *Chaidez v. Gonzales*, 486 F.3d 1079, 1082 (9th Cir. 2007), and for abuse of discretion the denial of motions to reopen, *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002). We grant in part and dismiss in part the petition for review.

The IJ abused his discretion by applying to Ventura Canales' Order to Show Cause a presumption of proper delivery that applies only to notices of hearing. *See Chaidez*, 486 F.3d at 1085. We remand for the BIA to apply the proper legal standard when determining whether the government met its burden of establishing proper service. *See generally INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam); *see also Chaidez*, 486 F.3d at 1087.

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Each party shall bear its own costs for this petition for review.

PETITION FOR REVIEW GRANTED in part; DISMISSED in part; and REMANDED.