

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MEI FENG XU,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-74755

Agency No. A077-297-889

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Mei Feng Xu, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Singh*

* 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).

v. INS, 295 F.3d 1037, 1039 (9th Cir. 2002), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Xu's motion to reopen because written notice of the hearing was mailed to Xu at the address of record, and the motion was untimely filed nearly eight years after the issuance of the July 21, 2000, in absentia order. *See* 8 C.F.R. § 1003.23(b)(4)(ii).

To the extent Xu alleges ineffective assistance of counsel, we lack jurisdiction to review that contention because Xu failed to raise it before the BIA and therefore failed to exhaust her administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.