

MAR 22 2011

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

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MOUSSA NDIAYE,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-71558

Agency No. A077-383-406

MEMORANDUM\*

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

Submitted March 8, 2011\*\*

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Moussa Ndiaye, a native and citizen of Mauritania, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review

---

\* 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).

for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The agency did not abuse its discretion in denying Ndiaye's motion to reopen where written notice of the hearing was mailed to the most recent address provided by Ndiaye and he admitted to receiving the notice, *see* 8 U.S.C.

§§ 1229(c), 1229a(b)(5)(A), and where Ndiaye also failed to establish that his failure to appear was because of "exceptional circumstances," *see* 8 U.S.C.

§ 1229a(e)(1).

In his opening brief, Ndiaye fails to address, and therefore has waived any challenge to, the BIA's determination that he failed to provide previously unavailable evidence or evidence of changed country conditions relevant to his asylum application. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

**PETITION FOR REVIEW DENIED.**