

APR 27 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AVTAR SINGH RIAT,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-72142

Agency No. A075-019-619

MEMORANDUM*

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

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Avtar Singh Riat, a native and citizen of India, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his motion to reopen deportation proceedings held in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252.

* 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).

We review for abuse of discretion the denial of a motion to reopen for abuse of discretion, and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Riat's motion to reopen based on ineffective assistance of counsel where Riat failed to show he had been prejudiced by former counsel. *See id.* at 793-94 (“[P]rejudice results when ‘the performance of counsel was so inadequate that it may have affected the outcome of the proceedings.’”).

In his opening brief, Riat fails to address, and therefore has waived any challenge to, the agency's determination that his motion to reopen to adjust status was untimely. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (holding issues that are not specifically raised and argued in a party's opening brief are waived).

We lack jurisdiction to review the agency's decision not to invoke its sua sponte authority to reopen proceedings. *See Mejia-Hernandez v. Holder*, No. 07-74277, 2011 WL 240357, at *4 (9th Cir. Jan. 27, 2011).

Riat's remaining contention is unavailing.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.