

JUN 21 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BO WANG,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-74126

Agency No. A088-283-577

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Bo Wang, a native and citizen of China, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing her appeal from an immigration judge’s decision denying her motion to reopen removal proceedings conducted in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen. *Sembiring v. Gonzales*, 499 F.3d 981, 985 (9th Cir. 2007). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Wang's motion to reopen where she failed to overcome the presumption of effective delivery of her notice of hearing, *see id.* at 986-88, and failed to establish that the alleged ineffective assistance of an immigration consultant constituted an exceptional circumstance warranting rescission of her in absentia removal order, *see Monjaraz-Munoz v. INS*, 327 F.3d 892, 896 (9th Cir. 2003) (petitioner must show the alleged ineffective assistance was the cause of her failure to appear for her hearing).

We lack jurisdiction to consider Wang's contention that she received ineffective assistance of counsel from the attorney who prepared her motion to reopen and her BIA appeal because she failed to exhaust this contention before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

Wang's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.