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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ENJI LI,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 09-71954

Agency No. A088-125-406

MEMORANDUM\*

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

Submitted July 12, 2011\*\*

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Enji Li, a native and citizen of China, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's order 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

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\* 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), and we deny in part and dismiss in part the petition for review.

The agency was within its discretion in denying Li's motion to reopen on the ground that she failed to rebut the presumption of effective service by regular mail. *See* 8 U.S.C. § 1229a(b)(5)(C)(ii); *cf. Sembiring*, 499 F.3d at 988-89 (describing evidence sufficient to overcome presumption of effective service). In evaluating this petition for review, we do not consider facts asserted for the first time in Li's opening brief. *See Sembiring*, 499 F.3d at 988.

Li failed to exhaust her contention concerning service of retained counsel. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (this court lacks jurisdiction to review contentions not raised before the agency).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**