

AUG 9 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARCENIO TOMAS ZARATE-
ALCANTARA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-71686

Agency No. A072-143-685

MEMORANDUM*

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

Submitted August 2, 2011**

Before: RYMER, IKUTA, and N.R. SMITH, Circuit Judges.

Arcenio Tomas Zarate-Alcantara, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen deportation proceedings held in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of motions to

* 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).

reopen. *Garcia v. INS*, 222 F.3d 1208, 1209 (9th Cir. 2000) (per curiam). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Zarate-Alcantara's motion to reopen because Zarate-Alcantara was accompanied by counsel to his hearing where counsel received both oral and written notice of Zarate-Alcantara's next scheduled hearing. *See* 8 U.S.C. § 1252b(a)(2), (c)(1) (1995); *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (BIA's denial of a motion to reopen shall be reversed if it is "arbitrary, irrational, or contrary to law.").

We lack jurisdiction to review Zarate-Alcantara's contention that a Spanish version of his notice of hearing should have been issued under 8 U.S.C. § 1252b(a)(3) (1995) because he failed to raise that issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (explaining that this court lacks jurisdiction to review contentions not raised before the agency).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.