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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JESUS BARRERA OSORIO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 12-73027

Agency No. A095-875-471

MEMORANDUM\*

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

Submitted February 18, 2014\*\*

Before: ALARCÓN, O’SCANNLAIN, and FERNANDEZ, Circuit Judges.

Jesus Barrera Osorio, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order summarily affirming an immigration judge’s (“IJ”) denial of his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review

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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).

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

We deny the petition for review.

The IJ did not abuse her discretion in denying Barrera Osorio's motion to reopen where Barrera Osorio failed to establish that exceptional circumstances excused his failure to appear at his hearing. *See* 8 U.S.C. § 1229a(e)(1) (defining exceptional circumstances as circumstances beyond the control of the alien).

Barrera Osorio's contention that the IJ did not consider the totality of circumstances is not supported by the record.

The BIA did not err in summarily affirming Barrera Osorio's appeal where the factors he presented for his failure to appear did not present a novel factual or legal scenario. *See* 8 C.F.R. § 1003.1(e)(4)(i)(B) (setting forth situations which are appropriate for affirmance without opinion); *cf. Chen v. Ashcroft*, 378 F.3d 1081, 1086-87 (9th Cir. 2004) (remanding to the BIA for consideration of a novel and substantial legal issue in the first instance).

**PETITION FOR REVIEW DENIED.**