

AUG 15 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE CESAR FERNANDEZ-ZARATE,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70273

Agency No. A092-741-067

MEMORANDUM*

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

Submitted August 13, 2014**

Before: SCHROEDER, THOMAS, and HURWITZ, Circuit Judges

Jose Cesar Fernandez-Zarate, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We deny the

* 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).

petition for review.

Fernandez-Zarate does not challenge the agency's dispositive determinations that his failure to appear at his hearing was not due to a lack of notice, and that, under *Singh-Bhathal v. INS*, 170 F.3d 943 (9th Cir 1999), the misadvice from a non-attorney regarding the importance of Fernandez-Zarate's appearance at his March 2006 hearing did not constitute an exceptional circumstance. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010).

In light of our disposition, we need not reach Fernandez-Zarate's remaining contentions regarding equitable tolling and compliance with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). *See Mendez-Alcaraz v. Gonzales*, 464 F.3d 842, 844 (9th Cir. 2006) (declining to reach nondispositive challenges to a BIA order).

PETITION FOR REVIEW DENIED.