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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HUIRONG CHENG,</p> <p>Petitioner,</p> <p>v.</p> <p>LORETTA E. LYNCH, Attorney General,</p> <p>Respondent.</p>
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No. 11-72890

Agency No. A097-881-475

MEMORANDUM*

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

Submitted April 4, 2016**
Pasadena, California

Before: FARRIS, BEA, and M. SMITH, Circuit Judges.

Huirong Cheng, a native and citizen of China, petitions for review of the 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 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, *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008), and we deny the petition for review.

The agency did not abuse its discretion in denying Cheng's motion to reopen on the ground that his mistake concerning the time of his hearing did not constitute exceptional circumstances beyond his control that would excuse his failure to appear. See 8 U.S.C. § 1229a(b)(5)(C), (e)(1); *Valencia-Fragoso v. INS*, 321 F.3d 1204, 1205–06 (9th Cir. 2003); cf. *Singh v. INS*, 295 F.3d 1037, 1040 (9th Cir. 2002). As in *Valencia-Fragoso*, Cheng failed to appear because he misreclected the time of his hearing. 321 F.3d at 1205–06. Unlike in *Singh*, Cheng was not, at the time of his hearing, the beneficiary of an approved visa petition. *Id*; *Singh*, 295 F.3d at 1040. Thus, the disposition of this case is controlled by *Valencia-Fragoso*.

PETITION FOR REVIEW DENIED.