

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 25 2022

FOR THE NINTH CIRCUIT

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

FERNANDO CRUZ HERNANDEZ,

No. 19-73262

Petitioner,

Agency No. A205-465-394

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted January 19, 2022**

Before: SILVERMAN, CLIFTON, and HURWITZ, Circuit Judges.

Fernando Cruz Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his motion to reopen proceedings and rescind an in absentia removal order. We have jurisdiction under 8 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review for abuse of discretion the denial of a motion to reopen.

Arredondo v. Lynch, 824 F.3d 801, 805 (9th Cir. 2016). We deny the petition for review.

The BIA did not abuse its discretion in denying Cruz Hernandez's motion to reopen removal proceedings conducted in absentia, where Cruz Hernandez failed to demonstrate exceptional circumstances to excuse his absence from the hearing. *See* 8 U.S.C. § 1229a(b)(5)(C); *Arredondo*, 824 F.3d at 805-06 (setting forth standards governing when a motion to reopen may rescind an in absentia removal order and discussing exceptional circumstances); *see also Valencia-Fragoso v. INS*, 321 F.3d 1204, 1205-06 (9th Cir. 2003) (per curiam) (concluding BIA did not abuse its discretion in determining that petitioner failed to establish that her misunderstanding of the hearing time amounted to exceptional circumstances).

The temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED.