

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 15 2022

FOR THE NINTH CIRCUIT

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

UBALDO TISTOJ; et al.,

No. 20-73243

Petitioners,

Agency Nos. A203-684-958

A203-684-959

v.

MERRICK B. GARLAND, Attorney
General,

MEMORANDUM*

Respondent.

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

Submitted April 11, 2022**

Before: McKEOWN, CHRISTEN, and BRESS, Circuit Judges.

Ubaldo Tistoj¹ and his minor child, natives and citizens of Guatemala,
petition for review of the Board of Immigration Appeals' order dismissing their

* 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).

¹ Although lead petitioner's name appears as "Ubaldo Tistoj" in the Petition for Review, it appears as "Ubaldo Antonio Tistoj-Vasquez" in the agency decisions, Notice to Appear, and Opening Brief.

appeal from an immigration judge's ("IJ") decision denying their motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying the motion to reopen to rescind petitioners' removal orders, where petitioners did not dispute that the hearing notice was correctly addressed and mailed twenty-three days before the hearing, and the evidence petitioners submitted was not sufficient to overcome the presumption of effective service. *See* 8 U.S.C. §§ 1229a(b)(5)(C), 1229(c); *see also Sembiring v. Gonzales*, 499 F.3d 981, 988 (9th Cir. 2007) (describing evidence sufficient to overcome the presumption of effective mail service).

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

PETITION FOR REVIEW DENIED.