

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 17 2023

FOR THE NINTH CIRCUIT

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

ASAD ALI SHAH,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 20-72777

Agency No. A201-383-419

MEMORANDUM\*

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

Submitted March 14, 2023\*\*

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

Asad Ali Shah, a native of Pakistan and citizen of Pakistan and Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his motion to reopen and rescind his in absentia removal order. We have jurisdiction under

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\* 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).

8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and we review de novo questions of law, including claims of ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying Shah’s motion to reopen based on lack of notice where Shah was personally served a notice to appear including all proper advisals, his notice of hearing was sent to the address on file with the immigration court, and his attorney notified him of his change in hearing date. *See* 8 U.S.C. § 1229(c) (“[S]ervice by mail . . . shall be sufficient if there is proof of attempted delivery to the last address provided,” and noncitizen was served a notice to appear with advisal to inform the agency of his address and the consequences of failing to do so); *see also Khan v. Ashcroft*, 374 F.3d 825, 828 (9th Cir. 2004) (actual notice is sufficient to meet due process requirements).

The agency did not abuse its discretion in denying Shah’s motion to reopen based on exceptional circumstances where he did not establish that his failure to appear at his hearing was caused by ineffective assistance of counsel or another exceptional circumstance beyond his control. *See* 8 U.S.C. § 1229a(e)(1) (exceptional circumstances defined as circumstances beyond the control of the noncitizen).

We do not address Shah’s contentions regarding his eligibility for asylum and related relief because the agency did not reach these issues in denying his motion to reopen. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) (“In reviewing the decision of the BIA, we consider only the grounds relied upon by that agency.” (citation and internal quotation marks omitted)).

We take no action on Shah’s renewed request for employment authorization. *See* 8 C.F.R. § 208.7(a).

We do not consider the materials Shah submitted with his supplemental letter that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc).

The temporary stay of removal remains in place until the mandates issues.

**PETITION FOR REVIEW DENIED.**