

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 16 2026

FOR THE NINTH CIRCUIT

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

ALEXIS MPUNDU,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 24-7552

Agency No.
A245-821-522

MEMORANDUM*

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

Submitted September 14, 2026**
Phoenix, Arizona

Before: BADE and TUNG, Circuit Judges, and KANE, District Judge.***

Alexis Mpundu petitions for review of the Board of Immigration Appeals' (BIA) dismissal of his appeal of an immigration judge's (IJ) denial of his motion to reopen and rescind a removal order issued in absentia. We have jurisdiction under

* 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).

*** The Honorable Yvette Kane, United States District Judge for the Middle District of Pennsylvania, sitting by designation.

8 U.S.C. § 1252, and we deny the petition.

“When the BIA conducts its own review of the evidence and law rather than adopting the IJ’s decision, our review ‘is limited to the BIA’s decision, except to the extent that the IJ’s opinion is expressly adopted.’” *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010) (quoting *Hosseini v. Gonzales*, 471 F.3d 953, 957 (9th Cir. 2006)). “We review the denial of a motion to reopen for abuse of discretion.” *Montejo-Gonzalez v. Bondi*, 166 F.4th 851, 854 (9th Cir. 2026) (en banc). “The BIA abuses its discretion when it acts arbitrarily, irrationally, or contrary to the law, and when it fails to provide a reasoned explanation for its actions.” *Id.* (quoting *Hernandez-Galand v. Garland*, 996 F.3d 1030, 1034 (9th Cir. 2021)).

1. The BIA did not abuse its discretion by affirming the IJ’s denial of Mpundu’s motion to reopen and dismissing his appeal. Under the Immigration and Nationality Act, an in absentia removal order “may be rescinded . . . upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances.” 8 U.S.C. § 1229a(b)(5)(C)(i). “The term ‘exceptional circumstances’ refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling

circumstances) beyond the control of the alien.” 8 U.S.C. § 1229a(e)(1). Thus, to meet the “exceptional circumstances” requirement, “the circumstances (1) must cause the [alien’s] failure to appear, (2) must be beyond the petitioner’s control, and (3) must be sufficiently compelling.” *Montejo-Gonzalez*, 166 F.4th at 854. There are no “bright-line rules about what can or cannot qualify as an exceptional circumstance.” *Id.* at 856. Rather, the BIA must look “to the particularized facts presented in each case” and consider the “totality of the circumstances.” *Id.* at 854 (quoting *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000)).

Here, the BIA considered the particularized facts of Mpundu’s case and the totality of the circumstances, including (1) his diligence; (2) his reasons for failing to appear at the hearing; and (3) his claimed fear of return to Rwanda and the Democratic Republic of the Congo. And based on these particularized facts and the totality of the circumstances, the BIA concluded that Mpundu did not establish that his failure to appear at his scheduled removal hearing was the result of exceptional circumstances beyond his control.

The BIA’s decision is supported by the record and is not arbitrary or irrational. *See id.* Although Mpundu stated in his motion to reopen that he “had a serious pain in [his] leg,” he did not explain why the leg pain constituted an exceptional circumstance. Nor did he explain why he failed to take alternative steps that were within his control, such as contacting the Immigration Court before

the hearing or seeking medical treatment. *See* 8 U.S.C. § 1229a(e)(1). The BIA reasonably concluded that the circumstances described were not exceptional. As for the assertions raised in Mpundu’s counseled briefs, they also do not establish an exceptional circumstance, and several of them were not presented to the agency. *See* 8 U.S.C. § 1252(b)(4)(A) (“[T]he court of appeals shall decide the petition only on the administrative record on which the order of removal is based.”). The record therefore does not compel the conclusion that exceptional circumstances beyond Mpundu’s control caused him to not appear at his hearing. *See Celis-Castellano v. Ashcroft*, 298 F.3d 888, 892 (9th Cir. 2002) (concluding that the petitioner has the burden to show that the record compels reversing the agency’s exceptional circumstances finding).

PETITION DENIED.¹

¹ On appeal, Mpundu does not argue that the BIA erred in declining to sua sponte reopen his removal proceedings and therefore any argument on this issue is forfeited. *See Hernandez v. Garland*, 47 F.4th 908, 916 (9th Cir. 2022) (explaining that arguments that are not meaningfully developed in a petitioner’s opening brief are forfeited).