

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

F I L E D

May 19, 2010

No. 09-60221
Summary Calendar

Lyle W. Cayce
Clerk

JUAN AYAVACA-ZEAS, also known as Juan Antonio Ayavaca-Zeas,

Petitioner

v.

ERIC H. HOLDER, JR., U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A73 748 556

Before KING, STEWART and HAYNES, Circuit Judges.

PER CURIAM:*

Juan Ayavaca-Zeas (Ayavaca) petitions this court for review of the order of the Board of Immigration Appeals (BIA) denying his motion to reopen his in absentia removal proceedings. Ayavaca argues that the BIA erred by denying his motion to reopen because notice of the March 27, 1995, hearing was only mailed to his attorney. He contends receipt of the notice of hearing by counsel is insufficient and, as a result, his in absentia order should be rescinded.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The decision to reopen proceedings is a discretionary decision, and this court applies a highly deferential abuse of discretion standard when reviewing the BIA's denial of a motion to reopen. *Lara v. Trominski*, 216 F.3d 487, 496 (5th Cir. 2000). This court will affirm the BIA's decision as long as it is not "capricious, racially invidious, utterly without foundation in the evidence, or otherwise so irrational that it is arbitrary rather than the result of any perceptible rational approach." *Singh v. Gonzales*, 436 F.3d 484, 487 (5th Cir. 2006) (citation omitted).

Ayavaca has not shown that the BIA abused its discretion in denying the motion to reopen. Receipt of the notice of hearing by counsel is sufficient notice because personal service on Ayavaca was not practicable. See 8 U.S.C. § 1252b(a)(2), (c)(3)(B) (1994). Thus, the BIA did not abuse its discretion in denying Ayavaca's motion to reopen. The petition for review is DENIED.