

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

No. 18-60100
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 8, 2019

Lyle W. Cayce
Clerk

CARLOS JAVIER LARIOS-GIRON,

Petitioner

v.

WILLIAM P. BARR, U.S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A200 000 677

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Carlos Javier Larios-Giron, a native and citizen of Guatemala, was ordered removed in absentia after failing to appear at his removal hearing. The Board of Immigration Appeals (BIA) denied his two motions to reopen the removal hearing as time and number barred. As to the May 31, 2007 motion to reopen, the BIA further determined that Larios-Giron failed to submit material, persuasive evidence of changed country conditions that would

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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warrant an exception to the 90-day filing deadline. As to the July 7, 2017, motion to reopen, the BIA concluded that Larios-Giron did not qualify for equitable tolling of the limitations period. Larios-Giron now petitions for review of the BIA's decision. He argues that the BIA abused its discretion in finding no change of country conditions in Guatemala. He also argues that the limitations period should have been equitably tolled based on counsel's failure to challenge the defects in the Notice to Appear and failure to argue that 8 C.F.R. § 1003.18(b) was not reasonably related to 8 U.S.C. § 1229b(d)(1).

The BIA did not abuse its discretion in denying the motions to reopen. There is evidentiary support for the BIA's conclusion that there was no change in country conditions in Guatemala. *See Nunez v. Sessions*, 882 F.3d 499, 504-05, 590-10 (5th Cir. 2018); *Lugo-Resendez v. Lynch*, 831 F.3d 340 (5th Cir. 2016). Moreover, because Larios-Giron was not entitled to service of the notice to appear based on his failure to provide an address to immigration officials, *see Gomez-Palacios v. Holder*, 560 F.3d 354, 358 (5th Cir. 2009), he cannot show that counsel was ineffective for failing to raise the unavailing argument that his notice to appear was defective. *See Mai v. Gonzales*, 473 F.3d 162, 165 (5th Cir. 2006); *Miranda-Lores v. I.N.S.*, 17 F.3d 84, 85 (5th Cir. 1994). Finally, Larios-Giron failed to exhaust the argument that counsel rendered ineffective assistance by failing to challenge the notice regulation and, as result, this court lacks jurisdiction to review it. *See Omari v. Holder*, 562 F.3d 314, 318-19 (5th Cir. 2009).

The petition for review is DISMISSED IN PART for lack of jurisdiction and DENIED IN PART.