

United States Court of Appeals for the Fifth Circuit

No. 22-60216
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 28, 2023

Lyle W. Cayce
Clerk

JOSE DIMAS MALDONADO,

Petitioner,

versus

MERRICK GARLAND, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A029 318 865

Before BARKSDALE, HIGGINSON, and HO, *Circuit Judges.*

PER CURIAM:*

Jose Dimas Maldonado, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals' (BIA) dismissing his appeal from an order of an immigration judge (IJ) denying his motion to reopen. Over 30 years ago, Maldonado was served in 1989 with an order to show cause, alleging he entered the United States without inspection. The IJ

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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administratively closed the case, but the former Immigration and Naturalization Service moved to re-calendar the proceeding. A week later, a notice of hearing was mailed to his address on file, but he failed to attend the hearing and on 1 August 1990 was ordered removed *in absentia*.

Maldonado was arrested in 2021 for battery. He moved to reopen his deportation proceeding, alleging he did not receive notice of the hearing and was unaware of the removal order until his arrest.

Maldonado contends: the record is missing material documents, which violates his due-process rights; and the BIA used the incorrect legal standard in considering whether he received notice.

Our court reviews the BIA's order, but will evaluate the IJ's decision to the extent it influenced that of the BIA. *E.g., Nunez v. Sessions*, 882 F.3d 499, 505 (5th Cir. 2018). Denial of a motion to reopen is reviewed under "a highly deferential abuse-of-discretion standard". *Id.* This standard requires the BIA's decision to stand, even if this court concludes that it is erroneous, provided "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". *Zhao v. Gonzales*, 404 F.3d 295, 304 (5th Cir. 2005) (citation omitted).

Regarding Maldonado's due-process claim, and even assuming the record is incomplete, "there is no liberty interest at stake in a motion to reopen due to the discretionary nature of the relief sought". *Nunez*, 882 F.3d at 507 n.3 (citation omitted). Therefore, he "cannot establish a due process violation". *Id.*

Assuming without deciding Maldonado fully exhausted his second claim, the BIA ruled that former 8 U.S.C. § 1252(b) (1990) applied because the order to show cause and notice of hearing were issued prior to 13 June 1992. *See Rodriguez-Manzano v. Holder*, 666 F.3d 948, 954 (5th Cir. 2012)

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(providing former § 1252(b) governs proceedings commenced prior to 13 June 1992). It then evaluated his motion according to the applicable “reasonable cause” standard an alien must satisfy in having his case reopened due to lack of notice, ultimately concluding, *inter alia*, that Maldonado had a reasonable opportunity to attend his hearing but failed to show reasonable cause to excuse his absence. *E.g.*, *Williams-Igwonobe v. Gonzales*, 437 F.3d 453, 455 & n.1 (5th Cir. 2006) (alien denied discretionary relief *in absentia* under former § 1252(b) may demonstrate reasonable cause for non-attendance). He fails to satisfy our highly deferential abuse-of-discretion standard.

DENIED.