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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGARITA VIZCARRA DE
BASILIO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-74362

Agency No. A077-342-306

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Margarita Vizcarra de Basilio, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") order denying her motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review for abuse of discretion the denial of a motion to reopen, review for substantial evidence the agency's factual findings, and review de novo questions of law. *Hamzaspyan v. Holder*, 590 F.3d 744, 747 (9th Cir. 2009). We deny the petition for review.

The agency did not abuse its discretion in denying Vizcarra de Basilio's motion to reopen because the evidence Vizcarra de Basilio submitted with her motion does not compel the conclusion that she suffered from a serious illness sufficient to establish an exceptional circumstance that would excuse her failure to appear. *See Celis-Castellano v. Ashcroft*, 298 F.3d 888, 891-92 (9th Cir. 2002).

The BIA did not err by declining to consider the new evidence Vizcarra de Basilio submitted on appeal. *See* 8 C.F.R. § 1003.1(d)(3)(iv); *see also Matter of Grijalva*, 21 I. & N. Dec. 27, 36 (BIA 1995) (the BIA will not remand to the IJ for consideration of evidence submitted on appeal that was available and could have been presented along with a motion to reopen filed with the IJ).

PETITION FOR REVIEW DENIED.