

NOV 19 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIO ALFONSO CANAS-CANAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 11-70241

Agency No. A028-778-040

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Mario Alfonso Canas-Canas, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his motion to reopen deportation proceedings held in absentia. We have jurisdiction under 8 U.S.C.

* 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).

§ 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo questions of law. *Garcia v. INS*, 222 F.3d 1208, 1209 (9th Cir. 2000) (per curiam). We deny the petition for review.

The agency did not abuse its discretion in denying Canas-Canas' motion to reopen on the ground that he failed to establish reasonable cause for his absence at his deportation hearing where the record shows the next hearing was scheduled in his presence and his counsel was personally served with a notice of the hearing. *See* 8 U.S.C. § 1252(b) (1990) (petitioner must establish "reasonable cause" for failure to appear); *Hernandez-Vivas v. INS*, 23 F.3d 1557, 1559-60 (9th Cir. 1994) (no reasonable cause for absence where petitioner was aware of next hearing date but failed to appear). It follows that Canas-Canas' due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice to prevail on due process claim).

PETITION FOR REVIEW DENIED.