

APR 22 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CESAR ARMANDO CALDERON-HERNANDEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-72479

Agency No. A097-676-425

MEMORANDUM*

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

Submitted April 16, 2013**

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Cesar Armando Calderon-Hernandez, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's denial of his motion to reopen removal proceedings held in absentia. Our jurisdiction is governed by 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, *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005), and we deny the petition for review.

The agency did not abuse its discretion in denying Calderon-Hernandez's motion to reopen based on lack of notice where the notice of hearing was mailed to the last address Calderon-Hernandez provided, and Calderon-Hernandez failed to submit any evidence that the return of the notice to the immigration court as "undeliverable" was the result of improper delivery by the postal service. *See* 8 U.S.C. § 1229(c); *Salta v. INS*, 314 F.3d 1076, 1079 (9th Cir. 2002). In addition, the notice provided Calderon-Hernandez reasonable time to prepare and retain counsel. *Cf.* 8 U.S.C. § 1229(b)(1).

Calderon-Hernandez's contention that denial of his motion to reopen would lead to an unconscionable result is unpersuasive because he failed to demonstrate eligibility for the relief requested. *See Singh v. INS*, 295 F.3d 1037, 1040 (9th Cir. 2002).

PETITION FOR REVIEW DENIED.