

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

JEAN FRANCOIS FOURT, AKA Keith  
Johnson,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting  
Attorney General,

Respondent.

No. 16-72791

Agency No. A071-951-514

MEMORANDUM\*

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

Submitted December 17, 2018\*\*

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Jean Francois Fourt, a native and citizen of France, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") order denying his motion to reopen removal proceedings conducted in absentia. Our jurisdiction is governed by 8 U.S.C.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 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 de novo questions of law. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The agency did not err in concluding that the IJ had jurisdiction to enter an in absentia order regardless of whether Fourt was in the United States at the time. *See* 8 U.S.C. § 1229a(b)(5)(A). We reject as unsupported Fourt's contentions that the agency misapplied *Matter of Sanchez-Herbert*, 26 I. & N. Dec. 43 (BIA 2012), or that 8 U.S.C. § 1229a(b)(5)(E) excludes aliens in non-contiguous foreign territories from in absentia proceedings.

We lack jurisdiction to consider Fourt's unexhausted contention that the IJ erroneously relied on incorrect statutory provisions in her decision. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (the court lacks jurisdiction to consider legal claims not presented in an alien's administrative proceedings before the agency).

Fourt has waived any challenge to the agency's dispositive determination that his motion to reopen was untimely, and in light of our disposition, we do not reach his remaining contentions regarding eligibility for relief.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**