

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 30 2018

FOR THE NINTH CIRCUIT

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

ALI BEN MOHAMED HENDAOU, I

No. 16-73975

Petitioner,

Agency No. A077-976-595

v.

MEMORANDUM*

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

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

Submitted November 27, 2018**

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

Ali Ben Mohamed Hendaoui, a native and citizen of Tunisia, petitions for review of the Board of Immigration Appeals' order affirming without opinion an immigration judge's order denying his motion to reopen removal proceedings conducted in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo

* 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).

questions of law. *Sembiring v. Gonzales*, 499 F.3d 981, 985 (9th Cir. 2007). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Hendaoui's motion to reopen based on lack of notice, where the notice to appear and notice of hearing were sent by regular mail to his most recent address of record, and he did not provide sufficient evidence to rebut the presumption of effective service. *See id.* at 988-89 (identifying factors relevant to evaluating a petitioner's rebuttal of the presumption of effective delivery); *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (holding the agency adequately considered evidence and sufficiently announced its decision).

We lack jurisdiction to consider Hendaoui's unexhausted due process contention. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (this court lacks jurisdiction to review contentions not raised before the agency).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.