United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 1, 2021
Lyle W. Cayce
Clerk

No. 19-60929
Summary Calendar

Ana Bermudez-Rios,

Petitioner,

versus

Merrick Garland, *U.S. Attorney General*,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A088 929 367

Before Barksdale, Graves, and Oldham, *Circuit Judges*.

Per Curiam:*

Ana Bermudez-Rios, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' (BIA) denying her motion to reopen and rescind her *in absentia* order of removal. Primarily at issue is

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* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

Bermudez' contention she is entitled to reopening and rescission because she did not receive proper notice of her removal proceedings. Her claim fails.

Bermudez presents other claims we do not address. She contends her due-process rights were violated by the immigration judge's failure to properly consider and grant her motion for change of venue, but this claim is unexhausted and we therefore lack jurisdiction to address it. *See Wang v. Ashcroft*, 260 F.3d 448, 452–53 (5th Cir. 2001). Additionally, she has abandoned review of her previous jurisdictional (application of stop-time rule) and *sua sponte* reopening claims by not addressing them in her brief in this court. *See Chambers v. Mukasey*, 520 F.3d 445, 448 n.1 (5th Cir. 2008).

The denial of a motion to reopen is reviewed under an understandably highly deferential abuse-of-discretion standard. *Lowe v. Sessions*, 872 F.3d 713, 715 (5th Cir. 2017). An *in absentia* order of removal may be rescinded if an alien demonstrates she did not receive notice of the hearing. 8 U.S.C. § 1229a(b)(5)(C)(ii).

While a motion to reopen focuses on whether the alien received the necessary notice, and not whether it was properly mailed, there is a presumption of effective service when a notice of hearing is sent by regular mail. *Nunez v. Sessions*, 882 F.3d 499, 506 (5th Cir. 2018). Although an affidavit without evidentiary flaw may be sufficient to rebut the presumption of receipt, "all relevant evidence, both direct and circumstantial, should be considered". *Navarrete-Lopez v. Barr*, 919 F.3d 951, 954 (5th Cir. 2019) (internal quotation and citation omitted).

In denying Bermudez' motion, the BIA considered, *inter alia*: her failure to submit a change of address form; her listing the same address to which the notice was sent in her motion to change venue; a second notice of hearing mailed to that address, and its not being returned as undeliverable; and her waiting more than nine years to file a motion to reopen. Because the

BIA considered the totality of the circumstances in determining Bermudez failed to rebut the presumption of receipt, the BIA did not abuse its discretion in denying her motion to reopen. *See Mauricio-Benitez v. Sessions*, 908 F.3d 144, 150 (5th Cir. 2018) (noting the BIA "may consider a variety of factors . . . to determine whether an alien has rebutted the presumption of delivery").

DISMISSED in part; DENIED in part.