

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

June 17, 2022

Lyle W. Cayce  
Clerk

---

No. 20-61037  
Summary Calendar

---

CARLOS MIRELES HERNANDEZ,

*Petitioner,*

*versus*

MERRICK GARLAND, *U.S. Attorney General,*

*Respondent.*

---

Petition for Review of an Order of the  
Board of Immigration Appeals  
BIA No. A078 984 909

---

Before SOUTHWICK, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Carlos Mireles Hernandez, a native and citizen of Mexico, petitions for review of the order by the Board of Immigration Appeals (BIA) affirming the denial of his motion to reopen by the Immigration Judge (IJ) and the BIA's decision not to exercise its sua sponte authority to reopen his case. In

---

\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-61037

2004, he was ordered removed in absentia. However, he argues on review that he never received a notice to appear, which was sent by regular mail.

When evaluating a denial of a motion to reopen, we review the BIA's order but will also evaluate the IJ's underlying decision to the extent it influenced the BIA's opinion, as it did here. *Nunez v. Sessions*, 882 F.3d 499, 505 (5th Cir. 2018). We evaluate the denial of a motion to reopen under "a highly deferential abuse-of-discretion standard." *Ramos-Portillo v. Barr*, 919 F.3d 955, 958 (5th Cir. 2019). Motions to reopen are disfavored, and the movant bears a heavy burden. *Gonzalez-Cantu v. Sessions*, 866 F.3d 302, 305 (5th Cir. 2017).

First, Mireles Hernandez has not shown that the BIA abused its discretion in determining that he failed to rebut the weaker presumption of service. *See Navarrete-Lopez v. Barr*, 919 F.3d 951, 953-54 (5th Cir. 2019). The BIA noted that (1) neither the notice to appear nor the hearing notice were returned as undeliverable; (2) Mireles Hernandez did not corroborate his claims with evidence or affidavits from individuals with relevant knowledge, including his former spouse, whom he claims checked the mail for him daily; and (3) it took 15 years for Mireles Hernandez to file a motion to reopen from the date of his order of removal. *See id.* at 954-55. Furthermore, as the IJ noted, it took Mireles Hernandez more than two years to move to reopen after he claimed to learn about the removal order. *Cf. Mauricio-Benitez v. Sessions*, 908 F.3d 144, 151 (5th Cir. 2018) (holding that the filing of motion to reopen six months after discovering removal order was "soon").

Next, we do not have jurisdiction "to review the BIA's discretionary decision not to invoke its sua sponte authority to reopen a case because there is no legal standard against which to judge that decision." *Mejia v. Whitaker*,

No. 20-61037

913 F.3d 482, 490 (5th Cir. 2019) (internal quotation marks and citation omitted); *see* 8 C.F.R. § 1003.2(a) (2020).

Accordingly, Mireles Hernandez's petition is DENIED in part and DISMISSED in part for lack of jurisdiction.