United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 23, 2025
Lyle W. Cayce
Clerk

No. 25-60218
Summary Calendar

OSCAR ALEXANDER RUBIO-ESPINAL,

Petitioner,

versus

PAMELA BONDI, *U.S. Attorney General*,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A098 895 590

Before BARKSDALE, GRAVES, and DUNCAN, *Circuit Judges*.

PER CURIAM:[*]

Oscar Alexander Rubio-Espinal, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' (BIA) affirming, without an opinion, the results of an Immigration Judge's decision denying his motion seeking reopening and rescission of a 2006 *in absentia* order of removal. He asserts he was not required to act diligently in moving to rescind

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

his removal order and, alternatively, that he acted diligently in doing so. He also asserts the BIA erred by: failing to consider his notice, equitable tolling, jurisdiction, and due-process contentions; and declining to reopen his proceedings *sua sponte*.

Because motions to reopen are "disfavored", their denial is reviewed under "a highly deferential abuse-of-discretion standard". *Gonzalez-Cantu v. Sessions*, 866 F.3d 302, 304–05 (5th Cir. 2017) (citation omitted). This standard requires the denial to stand unless it is "capricious, without foundation in the evidence, or otherwise so irrational that it is arbitrary rather than the result of any perceptible rational approach". *Id.* (citation omitted).

Rubio asserts he does not have to show diligence in moving to reopen because he never received notice of his removal proceedings. *See* 8 U.S.C. § 1229a(b)(5)(C)(ii) (permitting moving to reopen "at any time" if alien did not receive notice of proceedings). His contention is foreclosed by our court's precedent. *See Mejia v. Barr*, 952 F.3d 255, 260 (5th Cir. 2020) (holding moving to rescind "at any time" limited by diligence standard).

Regarding his alternative contention that he acted diligently, the BIA did not abuse its discretion in concluding his nine years of inaction constituted a lack of diligence. *See id.* at 257, 260.

Next, Rubio contends recission of his removal order is warranted because he was not provided notice of the removal hearing. We need not consider this contention because the BIA concluded that, even if Rubio did not receive notice, it would nonetheless deny his motion as a matter of discretion due to his lack of diligence. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

We will also not consider his equitable-tolling contention because it was first raised in his reply brief. *E.g.*, *Bouchikhi v. Holder*, 676 F.3d 173, 179 (5th Cir. 2012).

Rubio further asserts the Immigration Court (IC) lacked jurisdiction over his proceedings because his notice to appear (NTA) did not give a date and time for his hearing. His assertion fails because an NTA that "does not include the time . . . [or] date . . . of the initial hearing" does not affect the jurisdiction of the IC. *Maniar v. Garland*, 998 F.3d 235, 242 (5th Cir. 2021) (citation omitted).

Rubio's due-process contentions likewise fail because "there is no liberty interest at stake in a motion to reopen due to the discretionary nature of the relief sought". *Gomez-Palacios v. Holder*, 560 F.3d 354, 361 n.2 (5th Cir. 2009).

Finally, our court lacks jurisdiction to consider Rubio's challenge to the BIA's declining to exercise its discretion to *sua sponte* reopen his proceedings. *See Pena-Lopez v. Garland*, 33 F.4th 798, 807 (5th Cir. 2022).

DENIED in part; DISMISSED in part.