

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 9, 2026

Thomas B. Plunkett, III
Clerk

No. 25-60713
Summary Calendar

JOSE RODOLFO ZARAZUA HERNANDEZ,

Petitioner,

versus

TODD WALLACE BLANCHE, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A216 475 214

Before BARKSDALE, WILLETT, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Jose Rodolfo Zarazua Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) summarily dismissing his appeal as untimely and rejecting his equitable-tolling contention.

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

No. 25-60713

Our court reviews for abuse of discretion the BIA's summarily dismissing an appeal. *Townsend v. INS*, 799 F.2d 179, 182 (5th Cir. 1986); *Rioja v. Ashcroft*, 317 F.3d 514, 515 (5th Cir. 2003). The BIA abuses its discretion only if the decision is "capricious, racially invidious, utterly without foundation in the evidence, or otherwise so irrational that it is arbitrary rather than the result of any perceptible rational approach". *Zhao v. Gonzales*, 404 F.3d 295, 304 (5th Cir. 2005); *see also Portillo-Ordonez v. Blanche*, No. 25-60693, 2026 WL 1737018, at *1 (5th Cir. June 16, 2026) (applying same abuse-of-discretion standard in summary-dismissal instance).

The notice of appeal to the BIA was required to be filed within 30 days of the Immigration Judge's (IJ) decision. 8 C.F.R. § 1003.38(b) (2025). The filing period is subject to equitable tolling. *See Boch-Saban v. Garland*, 30 F.4th 411, 413 (5th Cir. 2022). Equitable tolling is available if an alien shows he has been pursuing his rights diligently and an extraordinary circumstance prevented timely filing. *Lugo-Resendez v. Lynch*, 831 F.3d 337, 344 (5th Cir. 2016).

Hernandez contends the appeal was timely, based on his reading of the regulations, because the 30-day filing period was not triggered when the IJ's decision was mailed to counsel's former address. He also contends the Immigration Court (IC) violated his due-process rights by failing to take additional steps to serve counsel after the decision was returned as undeliverable. These contentions are unexhausted because Hernandez failed to raise them before the BIA and the Government asserts exhaustion. *See Carreon v. Garland*, 71 F.4th 247, 257 (5th Cir. 2023).

Next, Hernandez challenges the BIA's deciding his appeal through a single member rather than referring it to a three-member panel. Our court lacks jurisdiction to review this discretionary decision. *See Mejia-Alvarenga*

No. 25-60713

v. Garland, 95 F.4th 319, 327 (5th Cir. 2024); *Cantu-Delgadillo v. Holder*, 584 F.3d 682, 690–91 (5th Cir. 2009).

Finally, Hernandez contends the BIA abused its discretion in declining to equitably toll the filing deadline and concluding there was no evidence supporting counsel's assertions regarding his address change. The BIA concluded Hernandez failed to establish the requisite extraordinary circumstances warranting equitable tolling because no evidence showed counsel updated his mailing address. Although counsel asserts he updated his address through the Executive Office for Immigration Review's (EOIR) electronic portal, his unsupported assertions are not evidence. *See United States v. Garcia*, 99 F.4th 253, 267 (5th Cir. 2024) (counsel's assertions in brief not evidence) (citing *INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984)).

In the alternative, assuming counsel updated his address electronically, this update did not change his address in Hernandez' individual case as EOIR procedures also require submission of a new EOIR form. EOIR Policy Manual Pt. I, Ch. 5.1(c) (explaining update to counsel's address in EOIR portal does not change address in individual cases and requiring submission of a new EOIR form for each case). Neither the returned envelope establishing the IJ's decision was unable to be delivered to counsel's address of record nor counsel's use of his new address on other filings before the IC establishes he properly updated his address in accordance with EOIR procedure.

DISMISSED in part; DENIED in part.