

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MESROP MARTIROSYAN,
Petitioner,

No. 98-70979

v.

INS No.
A73-986-818

IMMIGRATION AND NATURALIZATION
SERVICE,
Respondent.

ORDER

Filed June 14, 2001

Before: Mary M. Schroeder, Chief Judge,
J. Clifford Wallace, Harry Pregerson, Stephen Reinhardt,
Pamela Ann Rymer, Thomas G. Nelson,
Andrew J. Kleinfeld, A. Wallace Tashima,
M. Margaret McKeown, Ronald M. Gould, and
Johnnie B. Rawlinson, Circuit Judges.

ORDER

On March 13, 2001, upon a vote of a majority of non-recused regular active judges of this court, we ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3.1 By the same order, we directed that the three-judge panel opinion, Martirosyan v. INS, 229 F.3d 903 (9th Cir. 2000), "shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court." See 242 F.3d 905, 905 (9th Cir. 2001).

1 Judge Fisher was recused.

7419

On March 20, 2001, we received a letter from petitioner Mesrop Martirosyan's counsel of record, Louis A. Gordon, who advised this court that he had lost contact with Martirosyan and was unable to locate his client. Counsel requested clarification from the en banc court on how to pro-

ceed.

On April 17, 2001, Chief Judge Schroeder ordered Martirosyan personally to inform this court in writing within 21 days of his intent to continue with this proceeding, and advised Martirosyan that his failure to so inform the court would result in the automatic dismissal of his petition for review for failure to prosecute. Both counsel Gordon and the INS counsel of record were instructed to serve a copy of the April 17 order on Martirosyan at his last known addresses. This court also sent a copy of the April 17 order directly to Martirosyan at his last known address.

On April 24, 2001, the INS informed this court that it had served a copy of the April 17 order on Martirosyan at his last known address. Counsel Gordon advised this court on May 4, 2001 that he had served a copy of the April 17 order, by certified mail, on Martirosyan at his last known address.

As of today's date, Martirosyan has failed to respond to the April 17 order. Accordingly, the petition for review is DISMISSED for failure to comply with this court's April 17 order. See 9th Cir. Rule 42-1 ("When an appellant fails to . . . file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal."). The En Banc oral argument set for June 19, 2001 at 2:00 p.m. in San Francisco is VACATED. The three-judge panel opinion reported at 229 F.3d 903 (9th Cir. 2000) is VACATED and WITHDRAWN from publication.