

JAN 24 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARLON BRANDO ACEITUNO- ALVAREZ,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v</p> <p>ALBERTO R. GONZALES, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 05-71737

Agency No. A71-918-236

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 14, 2008**

Before: HALL, O’SCANNLAIN, and PAEZ, Circuit Judges.

Marlon Brando Aceituno-Alvarez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ order affirming, without opinion, the Immigration Judge’s (“IJ”) order denying his motion to reopen

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

deportation proceedings conducted *in absentia* in 1994. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *see Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005), and we deny the petition for review.

The IJ did not abuse his discretion in denying Aceituno-Alvarez' motion to reopen where, as Aceituno-Alvarez concedes, he failed to appear for his immigration hearing on May 27, 1994 after he was personally served with an Order to Show Cause and Notice of Hearing and did not demonstrate that his failure to appear was because of exceptional circumstances. *See* 8 U.S.C. § 1252b(c)(3) (1994); *see also Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1155 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.