

MAR 26 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FERMIN PEREZ-SOTO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-75609

Agency No. A18-213-392

MEMORANDUM*

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

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Fermin Perez-Soto, a native and citizen of Cuba, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration

* 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).

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judge's decision denying his motion to reopen deportation proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), we deny the petition for review.

The agency did not abuse its discretion in denying Perez-Soto's motion to reopen for failure to establish exceptional circumstances where Perez-Soto contended that he misunderstood or was confused as to the time of the scheduled hearing, the submitted evidence of his medical conditions predated the hearing by more than a decade, and Perez-Soto sought to reopen in order to seek relief under the Convention Against Torture. *See* 8 U.S.C. § 1229a(e)(1) ("exceptional circumstances" include those beyond the alien's control, such as the serious illness of the alien, or the death or serious illness of an immediate relative, but not less compelling circumstances); *Valencia-Fragoso v. INS*, 321 F.3d 1204, 1205-06 (9th Cir. 2003) (per curiam) (confusion as to time of scheduled hearing did not amount to exceptional circumstances where the in absentia order did not lead to unconscionable result).

PETITION FOR REVIEW DENIED.