

JUL 08 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TALAT MOHAMED KABIL, aka Talat
Khairy Mahmoud Kabil,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-70017

Agency No. A98-260-954

MEMORANDUM*

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

Submitted June 18, 2008**

Before: REINHARDT, W. FLETCHER, and CLIFTON, Circuit Judges.

Talat Mohamed Kabil, a native and citizen of Egypt, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal

* 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).

from an immigration judge's ("IJ") removal order. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo claims questions of law, *Mendoza-Mazariegos v. Mukasey*, 509 F.3d 1074, 1079 (9th Cir. 2007), and due process claims, *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). We dismiss in part and deny in part the petition for review.

We take judicial notice that subsequent to Kabil's filing of this petition for review, this court dismissed Kabil's appeal of his marriage fraud conviction. *See United States v. Kabil*, No. 06-10160 (9th Cir. Jan. 18, 2008). We therefore dismiss as moot Kabil's contention that the agency improperly considered his conviction before it was final. *See Morales-Alvarado v. INS*, 655 F.2d 172, 174-75 (9th Cir. 1981) (dismissing as moot petitioner's appeal where court took judicial notice that petitioner's conviction was affirmed by an appellate court and petitioner had exhausted his appeals of right).

We lack jurisdiction over Kabil's contention regarding changed circumstances in Egypt because he did not exhaust the claim before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (exhaustion is mandatory and jurisdictional).

Contrary to Kabil’s contention, his proceedings before the IJ were not “so fundamentally unfair that [he] was prevented from reasonably presenting his case.”

See Colmenar, 210 F.3d at 971 (citation omitted).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.