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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SURJIT SINGH,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, JR., Attorney General,</p> <p>Respondent.</p>
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No. 08-70414

Agency No. A097-582-095

MEMORANDUM*

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

Submitted February 18, 2008**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Surjit Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' dismissal of his appeal from an immigration judge's denial of his motion to reopen his removal proceedings, which had been conducted in absentia under 8 U.S.C. § 1229a(b)(5)(A). Singh contends that he established

* 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).

exceptional circumstances excusing his failure to appear at his hearing and that the denial of his motion to reopen was unconscionable because he was eligible for asylum and other relief. We have jurisdiction under 8 U.S.C. § 1252, and we review for an abuse of discretion. *See Celis-Castellano v. Ashcroft*, 298 F.3d 888, 890 (9th Cir. 2002). We deny the petition for review.

An in absentia order of removal may be rescinded if the alien establishes that his failure to appear was because of exceptional circumstances, such as serious illness, that were beyond his control. 8 U.S.C. § 1229a(b)(5)(C)(i), (e)(1).

In his motion to reopen, Singh stated that he failed to appear due to his “paralyzing fear” of being arrested in court. He stated that this fear stemmed from his arrest and multi-year detention by police in India. Singh attached a declaration stating that he had been told people could be arrested at immigration hearings and that the possibility of arrest terrified him. He also submitted a psychological report stating that he suffered from anxiety, depression, and post-traumatic stress disorder following his and his wife’s maltreatment in India and that one of the predominant symptoms of post-traumatic stress disorder is avoidance of situations associated with past trauma. In his motion to reopen, Singh further argued that he was entitled to relief from removal and therefore had no reason to delay proceedings.

We do not agree that the denial of the motion to reopen will lead to the “unconscionable result” of the removal of an individual with an obviously valid claim for relief. *Cf. Singh v. INS*, 295 F.3d 1037, 1040 (9th Cir. 2002). The Board did not abuse its discretion in concluding that Singh failed to establish exceptional circumstances excusing his failure to appear at his hearing. *See Celis-Castellano*, 298 F.3d at 892.

PETITION FOR REVIEW DENIED.