

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12888
Non-Argument Calendar

FRANCISCO J. LUNA,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A087-229-556

Before ROSENBAUM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

An immigration judge denied Francisco Javier Luna's motion to reopen his removal proceedings and rescind his in absentia

removal order. The Board of Immigration Appeals affirmed the denial. Luna petitions to review the board's decision. After careful review, we deny the petition.

FACTUAL BACKGROUD AND PROCEDURAL HISTORY

Luna is a Venezuelan native and citizen. He entered the United States on a visitor's visa in 1993. The Department of Homeland Security charged Luna with removability for remaining in the United States longer than permitted. *See* 8 U.S.C. § 1227(a)(1)(B). After many false starts, Luna was provided written and oral notice to appear at a September 27, 2024, hearing regarding his removal. When Luna failed to appear, the immigration judge found Luna removable in absentia and ordered him removed to Venezuela.

Luna moved to reopen his removal proceedings and rescind the in absentia removal order. Luna argued that “[e]xceptional circumstances” prevented his appearance because he mistakenly appeared for court on September 26, the day before his hearing, and was “misinform[ed]” by court staff that he had no hearing “that day” and that his case “had been removed from the court’s docket,” which Luna took to mean that he had no hearing the next day, either. Luna attached three pieces of evidence supporting his motion: (1) an affidavit laying out his recollection of his September 26 court visit; (2) a written statement by Luna’s brother confirming that the court bailiff informed them Luna had no court appearance “that day”; and (3) an illegible document titled, “Notice of Intent to Take Case Off of the Court’s Calendar.”

The immigration judge denied the motion to reopen because Luna did not demonstrate lack of notice, and he did not show “exceptional circumstances.” Luna, the immigration judge explained, received written notice of the September 27 hearing and was also orally informed about the hearing three times. Any confusion over his court date, the immigration judgment concluded, did not call for exceptional relief.

Luna appealed the decision to the board. He argued that his confusion, combined with his attendance at earlier hearings, his diligence in hiring counsel, and his timeliness in moving to reopen, established “exceptional circumstances” that warranted reopening the proceedings. He also argued that the immigration judge confused “lack of notice and exceptional circumstances,” which were two separate bases for rescission, and failed to “fully address” his arguments by not discussing his notice of intent.

The board dismissed Luna’s appeal and affirmed the immigration judge’s decision because, “[b]ased on the totality of the circumstances, [Luna] ha[d] not demonstrated exceptional circumstances that were beyond his control.” The board agreed with the immigration judge’s reasoning that Luna’s “confusion over the date of the hearing” was not outside his control nor of an “extraordinary nature” comparable to the kinds of exceptional circumstances laid out by statute, like battery, serious illness, or death of an immediate relative. The board noted that the notice of intent attached to Luna’s motion was “illegible.” And, it added, “even assuming [Luna] could establish he received [the notice],” he was

still absent for his hearing the next day—a hearing for which he “acknowledge[d] having received [a notice]” bearing the correct date.

STANDARD OF REVIEW

We review the denial of a motion to reopen—including the denial of a motion to rescind an in absentia removal order—for abuse of discretion. *Lonyem v. U.S. Att’y Gen.*, 352 F.3d 1338, 1340 (11th Cir. 2003). “This review is limited to determining whether the [board] exercised its discretion in an arbitrary or capricious manner.” *Zhang v. U.S. Att’y Gen.*, 572 F.3d 1316, 1319 (11th Cir. 2009). Where the board “unequivocally uph[olds]” and agrees with “the reasoning of the [immigration judge],” as here, we review both decisions. See *Bing Quan Lin v. U.S. Att’y Gen.*, 881 F.3d 860, 872–73 (11th Cir. 2018), *overruled in part on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023). Questions of law are subject to de novo review. *Ayala v. U.S. Att’y Gen.*, 605 F.3d 941, 948 (11th Cir. 2010). An argument that the board applied the wrong legal standard is a question of law. *Jeune v. U.S. Att’y Gen.*, 810 F.3d 792, 799 (11th Cir. 2016), *overruled in part on other grounds by Santos-Zacaria*, 598 U.S. at 419–23 & n.2; see *Patel v. United States Att’y Gen.*, 971 F.3d 1258, 1283–84 (11th Cir. 2020), *aff’d sub nom. Patel v. Garland*, 596 U.S. 328 (2022) (explaining that we have jurisdiction over the alleged misapplication of a legal standard).

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DISCUSSION

An alien who does not appear for a hearing after receiving written notice “shall be ordered removed in absentia if . . . written notice was so provided and [he] is removable.” 8 U.S.C. § 1229a(b)(5)(A). He may move to reopen and seek rescission of the in absentia removal order within 180 days if he demonstrates that the failure to appear was due to exceptional circumstances. *Id.* § 1229a(b)(5)(C)(i). The exceptional circumstances must be beyond his control and no “less compelling” than the statutory examples of “battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien.” *Id.* § 1229a(e)(1).

Luna offers three reasons why the board abused its discretion in denying his motion. First, he contends, his circumstances were exceptional because his absence was not based on a mistake, but rather, “misinformation” upon which he “reasonably relied.” But Luna’s motion alleged that staff informed him his case “had been removed from the court’s docket” and “no hearing had been scheduled” for September 26. The conclusion Luna drew from his conversation with the court staff—that he also had no hearing the next day—did not clearly follow. Nothing the staff said to Luna suggested that he did not have court on September 27—the day he had received written and oral notice of his hearing. The same goes for the notice of intent. To the extent it was legible, there was no indication that Luna’s hearing the next day had been rescheduled.

Second, Luna asserts that the board's decision was unsupported because the immigration judge confused "the issues of lack of notice and exceptional circumstances." But there was no confusion. The immigration judge made two separate findings—one about notice and the other about extraordinary circumstances. In making the extraordinary-circumstances finding, the immigration judge cited the multiple forms of notice that Luna received months in advance to explain why the circumstances were not extraordinary. Luna may disagree with the immigration judge's conclusion, but the judge did not misapply the legal standard for "exceptional circumstances."

Third, Luna maintains that the immigration judge failed to address the notice of intent he attached to his motion. But while the immigration judge had to consider all the evidence Luna submitted in support of his application for relief, she was not required to address specifically each piece of evidence presented. *See Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1302 (11th Cir. 2015) ("Although it is true that the IJ and the BIA must consider all the evidence submitted, it is well established that the IJ and the BIA need not address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (citation modified)), *overruled in part on other grounds by Santos-Zacaria*, 598 U.S. 411. In any event, the board did consider the notice and we agree with its finding that the notice was "illegible."

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CONCLUSION

Because the board did not abuse its discretion in denying Luna's motion to reopen, we deny his petition.

PETITION DENIED.