

June 6, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-60100
Summary Calendar

HENRY ALEXIS ROSALES-SANTOS,

Petitioner,

versus

ALBERTO R. GONZALES, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A28 589 967

Before JONES, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit
Judges.

PER CURIAM:*

Henry Alexis Rosales-Santos seeks a petition to review the Board of Immigration Appeals' (BIA) decision denying his motion to reopen as barred by the time and number limits of 8 C.F.R. § 1003.2(c)(2). Rosales-Santos argues that those limits do not apply to his motion to reopen the in absentia deportation proceeding based on his lack of notice.

However, the BIA did not treat Rosales-Santos's motion to reopen as seeking to rescind the in absentia deportation order.

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Instead, the BIA construed the motion as one to reopen its own September 23, 1999, decision. Rosales-Santos makes no argument that the BIA erred in construing his motion as a motion to reopen its prior decision and, accordingly, that issue is waived. See Rodriguez v. INS, 9 F.3d 408, 414 n.15 (5th Cir. 1993). As the BIA noted, Rosales-Santos had previously filed motions to reopen with both the IJ and the BIA and that the instant motion to reopen was filed more than six years after the BIA's September 1999 decision. Accordingly, the BIA did not err in determining that the instant motion to reopen was both time- and numerically-barred. See 8 C.F.R. § 1003.2(c)(2); Singh v. Gonzales, 436 F.3d 484, 488 (5th Cir. 2006).

The petition for review is **DENIED**.