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5 **UNITED STATES COURT OF APPEALS**
6 **FOR THE SECOND CIRCUIT**
7

8 **SUMMARY ORDER**
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10 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER**
11 **AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY**
12 **OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY**
13 **OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR**
14 **IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**
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16 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
17 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 27th
18 day of July, two thousand and six.

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20 PRESENT:

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22 HON. BARRINGTON D. PARKER,
23 HON. REENA RAGGI,
24 HON. RICHARD C. WESLEY,
25 *Circuit Judges.*
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28 Antonina Kaigorodova,

Petitioner,

30 v.

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32
33 Alberto R. Gonzales, United States Attorney General,
34 *Respondent.*
35

No. 06-0235-ag
NAC
A76-092-196

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37 FOR PETITIONER: Christina L. Harding, Gallagher, Malloy & Georges, PC,
38 Philadelphia, Pennsylvania.
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40 FOR RESPONDENT: Gregory R. Miller, United States Attorney for the Northern
41 District of Florida, E. Bryan Wilson, Assistant
42 United States Attorney, Tallahassee, Florida.
43

44 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
45 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the

1 petition for review is DENIED.

2 Antonina Kaigorodova, through counsel, petitions for review of the December 2005 BIA
3 decision affirming Immigration Judge (“IJ”) Jeffrey Chase’s decision denying her motion to
4 reopen removal proceedings. We assume the parties’ familiarity with the underlying facts and
5 procedural history of the case.

6 Where, as here, the BIA adopts and affirms, then supplements the IJ’s decision, we
7 review the IJ’s decision as supplemented by the BIA. *See Yu Yin Yang v. Gonzales*, 431 F.3d 84,
8 85 (2d Cir. 2005). We review the denial of a motion to reopen for an abuse of discretion. *Twum*
9 *v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Iavorski v. INS*, 232 F.3d 124, 128 (2d Cir. 2000)
10 (reviewing the denial of a motion to reopen after a removal order was entered *in absentia* to
11 determine whether the BIA’s decision “‘arbitrary, capricious, an abuse of discretion, or otherwise
12 not in accordance with the law’”).

13 Here, the IJ did not abuse his discretion in denying Kaigorodova’s motion to the extent
14 that it rested on a claim she did not receive proper notice of the hearing. The IJ found in
15 Kaigorodova’s file a copy of the notice for the hearing in question, which indicated that warnings
16 of the consequences of failure to appear had been given and that the notice had been served on
17 both parties. Moreover, a notice for a prior hearing indicated that Kaigorodova had been given
18 the warnings at that time in Russian. Finally, Kaigorodova admitted that she remembered being
19 given oral notice of the hearing, and writing it down; that she later lost the paper does not change
20 that she was informed of the date, time, and significance of the hearing.

21 Additionally, the BIA did not abuse its discretion in rejecting her claim that ineffective
22 assistance of counsel prevented her appearance at the hearing, when she failed to explain, either
23 to the IJ or BIA, the substance of her claim against her former counsel. That he refused to
24 represent her further after her asylum hearing, and that she was unable to obtain new counsel at

1 the time, is unfortunate, but she failed to explain how this circumstance prevented her from
2 attending her second hearing, when she was able to attend her first notwithstanding her *pro se*
3 status. Finally, even if she had demonstrated that she received ineffective assistance and was
4 prejudiced, the BIA was within its discretion in rejecting her ineffective assistance claim because
5 she failed to exercise due diligence in pursuing her asylum claim. *See Iavorski*, 232 F.3d at 135.
6 She waited over five years after the IJ ordered her removed before filing the motion to reopen,
7 admitted that she had not realized the importance of her asylum claim and had forgotten about it,
8 and failed to explain adequately the basis of her asylum claim in either her application or her
9 motion to reopen. Therefore, the IJ and BIA were well within their discretion in denying the
10 motion. *See id.*; *see also Cekic v. INS*, 435 F.3d 167, 171 (2d Cir. 2006).

11 _____ For the foregoing reasons, the petition for review is DENIED. Having completed our
12 review, any stay of removal that the Court previously granted in this petition is VACATED, and
13 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
14 request for oral argument in this petition is DENIED in accordance with Federal Rule of
15 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

16 FOR THE COURT:
17 Roseann B. MacKechnie, Clerk

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19 By: _____
20 Oliva M. George, Deputy Clerk