

DEC 29 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIA LOURDES ZEPEDA-DIAZ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-74261

Agency No. A096-049-367

MEMORANDUM\*

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

Submitted December 17, 2008\*\*

Before: GOODWIN, RYMER, and TROTT, Circuit Judges.

Maria Lourdes Zepeda-Diaz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of

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\* 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).

discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying Zepeda-Diaz's motion to reopen because she did not submit any evidence relating to her continuous physical presence. The record indicates that Zepeda-Diaz was placed in expedited removal proceedings in 1998 and ordered removed under a name she conceded was her alias. Zepeda-Diaz therefore did not establish a prima facie case for cancellation of removal. *See INS v. Wang*, 450 U.S. 139, 141 (1981) (per curiam) (movant must show prima facie eligibility for the underlying substantive relief requested in a motion to reopen); *Juarez-Ramos v. Gonzales*, 485 F.3d 509, 512 (9th Cir. 2007) (an expedited removal order interrupts an alien's continuous physical presence for cancellation purposes).

We do not consider Zepeda-Diaz's contention regarding hardship, because her failure to establish continuous physical presence is dispositive. *See* 8 U.S.C. § 1229b(b)(1)(A).

**PETITION FOR REVIEW DENIED.**