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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN MERLOS BELECH,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-74632

Agency No. A079-530-657

MEMORANDUM*

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

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Juan Merlos Belech, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review

* 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).

de novo claims of constitutional violations in immigration proceedings. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny in part and dismiss in part the petition for review.

Merlos Belech's contention that the BIA violated his due process rights by evaluating the evidence submitted with his motion rather than remanding it to the immigration judge for evaluation is unavailing. *See* 8 C.F.R. § 1003.2(c)(1) (the BIA has authority to determine whether a motion to reopen should be granted); *see also Ramirez-Alejandre v. Ashcroft*, 319 F.3d 365, 382 (9th Cir. 2003) ("Under BIA procedure, a motion to remand must meet all the requirements of a motion to reopen and the two are treated the same.").

We lack jurisdiction to consider Merlos Belech's challenge to the BIA's denial of his underlying asylum and withholding of removal claims, as this petition is not timely as to that order and the court has already addressed these claims. *See Merlos Belech v. Gonzales*, 168 Fed. Appx. 820 (9th Cir. 2006).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.