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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ELISEO PRIETO SANTOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-75108

Agency No. A079-248-742

MEMORANDUM*

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

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Eliseo Prieto Santos, a native and citizen of Mexico, 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).

for abuse of discretion the denial of a motion to reopen. *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Prieto Santos' motion to reopen on the ground that his fingerprints were not new or previously unavailable evidence. *See* 8 C.F.R. § 1003.2(c)(1). It follows that Santos has not established a due process violation. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to succeed on a due process claim).

To the extent Santos challenges the agency's underlying decision denying his application for cancellation of removal, and to the extent he raises due process claims related to that decision, we lack jurisdiction because this petition is not timely as to that decision. *See Stone v. INS*, 514 U.S. 386, 405 (1995).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.