

SEP 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOAQUIN ROSAS-REYES, aka Joaquin Reyes,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 07-70525

Agency No. A079-352-115

MEMORANDUM\*

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

Submitted September 14, 2009\*\*

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Joaquin Rosas-Reyes, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his motion to continue and ordering

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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).

him removed. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to continue and we review de novo claims of due process violations. *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008) (per curiam). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion or violate due process in denying Rosas-Reyes' motion to continue because the IJ had previously granted a continuance, and Rosas-Reyes' eligibility for adjustment of status was speculative. *See id.* at 1247 (denial of a motion to continue was not an abuse of discretion where proceedings had previously been continued and relief was not immediately available to petitioner); *see also Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to prevail on a due process claim).

Contrary to Rosas-Reyes' contention, the IJ's interpretation of the hardship standard falls within the broad range authorized by the statute. *See Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004-1006 (9th Cir. 2003).

We lack jurisdiction over Rosas-Reyes' other due process contentions because he did not raise them to the BIA and failed to exhaust his administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**