

NOV 25 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN GERARDO MARTINEZ-REYES,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 96-70204

Agency No. A070-926-460

MEMORANDUM*

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

Argued and Submitted July 9, 2009
Pasadena, California

Before: WARDLAW, RAWLINSON and N.R. SMITH, Circuit Judges.

Petitioner Juan Gerardo Martinez-Reyes (Martinez-Reyes) appeals the Board of Immigration Appeals's (BIA) decision affirming the Immigration Judge's denial of his application for suspension of deportation based on extreme hardship. *See* 8 U.S.C. § 1254(a)(1).

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The BIA considered the relevant evidence supporting Martinez-Reyes's claim before finding that his hardships were not extreme. In doing so, the BIA articulated reasons supported by the record for its decision. Because it "considered all of the relevant facts and articulated reasons for denying suspension that are supported by the record", the BIA did not abuse its discretion. *See Astrero v. I.N.S.*, 104 F.3d 264, 267 (9th Cir. 1996).

Although we deny the petition for review, due to the unusual procedural posture of this case, we stay issuance of the mandate for 180 days to provide Martinez-Reyes an opportunity to file a motion to reopen with the BIA. *See Ortiz v. I.N.S.*, 179 F.3d 1148, 1152 (9th Cir. 1999) (staying mandate to allow petitioners an opportunity to file a motion to reopen). Although we do not address the merits of Martinez-Reyes's claim, we note that his recent deportation does not preclude him from filing a motion to reopen. *See Reynoso-Cisneros v. Gonzales*, 491 F.3d 1001, 1002 (9th Cir. 2007).

**PETITION FOR REVIEW DENIED; ISSUANCE OF MANDATE
STAYED FOR 180 DAYS.**