

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YURITZI YAZMIN ROSALES SALTO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72519

Agency No. A075-714-736

MEMORANDUM\*

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

Submitted November 17, 2009\*\*

Before: ALARCÓN, TASHIMA, and TROTT, Circuit Judges.

Yuritzi Yazmin Rosales Salto, a native and citizen of Mexico, petitions pro  
se for review of the Board of Immigration Appeals’ (“BIA”) order denying her  
motion to reopen removal proceedings. We have jurisdiction pursuant to 8 U.S.C.

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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).

§ 1252. We review for abuse of 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 Rosales Salto's motion to reopen because she failed to state any new facts or present any new evidence to demonstrate the requisite physical presence. *See* 8 C.F.R. § 1003.2(c)(1) (providing that a motion to reopen "shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material."). Further, Rosales Salto did not demonstrate prima facie eligibility for adjustment of status pursuant to 8 U.S.C. § 1255(i) because her I-130 petition was filed after April 30, 2001. *See* 8 C.F.R. § 1245.10(a)(1)(i); *see also Mendez-Gutierrez v. Ashcroft*, 340 F.3d 865, 869-70 (9th Cir. 2003) ("[P]rima facie eligibility for the relief sought is a prerequisite for the granting of a motion to reopen.").

We do not consider Rosales Salto'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.**