

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 30 2009

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

JAIRO ALVAREZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-72177

Agency No. A070-785-083

MEMORANDUM\*

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

Submitted December 15, 2009\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Jairo Alvarez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's order denying his motion to reopen in order to apply for

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

adjustment of status. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002), we deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion by denying Alvarez’s motion to reopen, because the agency considered the evidence he submitted and acted within its broad discretion in determining that reopening was not warranted. *See id.* at 1039 (The BIA’s denial of a motion to reopen shall be reversed if it is “arbitrary, irrational, or contrary to law.”).

We lack jurisdiction to review the agency’s decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

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