

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 19 2010

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

ANDREY MININ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72498

Agency No. A095-177-947

MEMORANDUM*

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

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Andrey Minin, a native and citizen of Russia, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider and to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for

* 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).

abuse of discretion the denials of motions to reconsider and reopen, and we review de novo claims of due process violations. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Minin's motion to reconsider because the motion failed to identify any error of law or fact in the BIA's December 26, 2006 order. *See* 8 C.F.R. § 1003.2(b)(1).

The BIA did not abuse its discretion in denying Minin's motion to reopen because he failed to submit evidence of a bona fide marriage. *See Malhi v. INS*, 336 F.3d 989, 993-95 (9th Cir. 2003) (upholding denial of motion to reopen where petitioner failed to demonstrate prima facie case of bona fide marriage).

Minin's due process claim that the BIA did not properly mail the post-remand briefing schedule to counsel fails because he has not rebutted the presumption of proper mailing, and thus, has not shown any error by the BIA. *See Singh v. Gonzales*, 494 F.3d 1170, 1172 (9th Cir. 2007); *see also Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to prevail on a due process claim). Minin's due process claim that the BIA improperly failed to mail the briefing schedule to him personally is unexhausted because he failed to raise this issue in the motion for reconsideration. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Minin only challenges the denial of his claims for asylum and withholding of removal in his reply brief. We decline to review these claims, because he failed to raise them in his opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived).

PETITION FOR REVIEW DENIED in part, DISMISSED in part.