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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFAEL BERNAL URTIAGA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73487

Agency No. A095-190-491

MEMORANDUM*

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

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Rafael Bernal Urtiaga, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals (“BIA”) order denying his motion to

* 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).

reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252.

We dismiss in part and deny in part the petition for review.

In his motion to reopen, Bernal Urtiaga presented evidence that his wife was pregnant with their third child, but did not claim that the new child would suffer hardship. The remaining evidence presented with the motion to reopen concerned the same basic hardship grounds as Bernal Urtiaga's application for cancellation of removal. We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence would not alter the agency's prior discretionary determination that Bernal Urtiaga failed to establish the requisite hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 600 (9th Cir. 2006).

Our conclusion that we lack jurisdiction to review the BIA's denial of reopening forecloses Bernal Urtiaga's contention that the BIA failed to meaningfully review and analyze the issues raised in the motion. *See id.* at 603-04.

Bernal Urtiaga's remaining contentions are not persuasive.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.