

MAR 24 2010

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ELFEGO LOPEZ GARZON,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74350

Agency No. A075-318-977

MEMORANDUM*

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

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Elfego Lopez Garzon, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen.

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen. *Franco-Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006). We grant the petition for review and remand.

The BIA abused its discretion when it denied Lopez Garzon's motion to reopen because it failed to properly consider evidence of the future hardship resulting from his U.S. citizen son's diagnosis of ocular neuritis and his permanent loss of vision in his left eye. *See id.*

PETITION FOR REVIEW GRANTED; REMANDED.