

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 24 2010

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

CLYDE J. PINTO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74607

Agency No. A070-582-939

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.

Clyde J. Pinto, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. Reviewing 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, *Bhasin v. Gonzales*, 423 F.3d 977, 983 (9th Cir. 2005), we deny the petition for review.

The BIA did not abuse its discretion by denying Pinto's motion on discretionary grounds without ruling on his claim for equitable tolling. *See* 8 C.F.R. § 1003.2(a) (stating that BIA has the discretion to deny a motion to reopen "even if the party moving has made out a prima facie case for relief."). The BIA articulated the basis of its decision and reasonably concluded that Pinto's presentation of a false birth certificate and incredible testimony outweighed any positive equities in his favor. *See Bhasin*, 423 F.3d at 983-84.

Pinto's due process claims are not persuasive.

PETITION FOR REVIEW DENIED.