

APR 13 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERNESTO GOMEZ CONTRERAS,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73552

Agency No. A079-525-648

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Ernesto Gomez Contreras, 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 under 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. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Gomez Contreras's motion to reopen because he failed to demonstrate that the evidence he submitted was previously unavailable. See 8 C.F.R. §§ 1003.2(a) and (c); *Bhasin v. Gonzales*, 423 F.3d 977, 984 (9th Cir. 2005).

Moreover, the BIA did not abuse its discretion in requiring Gomez Contreras to comply with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), as a prerequisite to claiming ineffective assistance of counsel. See *Reyes v. Ashcroft*, 358 F.3d 592, 598-99 (9th Cir. 2004) (approving *Lozada* requirements when alleged ineffectiveness is not clear from the record). This is not a case in which "counsel's ineffective assistance was obvious and undisputed on the face of the record." *Id.* at 597.

PETITION FOR REVIEW DENIED.