

APR 16 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE ANGEL ERAZO-RIVAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-71072

Agency No. A098-989-531

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.

Jose Angel Erazo-Rivas, a native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals' ("BIA") decision denying his motion to reconsider. We have jurisdiction pursuant to 8 U.S.C. § 1252. We

* 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).

review for abuse of discretion the denial of a motion to reconsider, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), and we deny the petition for review.

The BIA did not abuse its discretion in construing Erazo-Rivas's motion, filed January 15, 2008, as a motion to reconsider. *See Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005) (where a petitioner improperly titles a motion to reopen or reconsider, the BIA should construe the motion based on its underlying purpose). So construed, the BIA did not abuse its discretion in denying Erazo-Rivas's motion to reconsider as untimely. *See* 8 C.F.R. § 1003.2(b)(2). Erazo-Rivas's due process claim therefore fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

PETITION FOR REVIEW DENIED.