

JUN 04 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PASCUAL AOUILINO GAYOSO
BERNAL,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-73406

Agency No. A079-538-013

MEMORANDUM*

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

Submitted May 25, 2010**
San Francisco, California

Before: CANBY, THOMAS and W. FLETCHER, Circuit Judges.

Pascual Aouilino Gayoso-Bernal, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his

* 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).

motion to reopen his removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying petitioner's motion to reopen to apply for asylum, withholding of removal or relief under the Convention Against Torture as untimely because he did not file the motion within 90 days of the BIA's final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), he failed to demonstrate material changed circumstances in Mexico to qualify for the regulatory exception to the time limit, *see* 8 C.F.R. § 1003.2(c)(3)(ii), and he did not establish prima facie eligibility for relief, *see Toufighi v. Mukasey*, 538 F.3d 988, 996-97 (9th Cir. 2008) (requiring movant to establish prima facie eligibility for relief); *see also Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (holding that Mexican aliens returning home from the United States did not qualify as a cognizable social group for purposes of asylum or withholding of removal).

We lack jurisdiction to review the BIA's June 7, 2005, order dismissing petitioner's direct appeal from an immigration judge's decision denying his application for cancellation of removal because this petition for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.

