

JUN 07 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSMI ELMER DE LEON MAZARIEGOS, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.
--

No. 07-73752

Agency No. A098-161-912

MEMORANDUM*

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

Submitted May 25, 2010**

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

Osmi Elmer De Leon Mazariegos, a native and citizen of Guatemala, 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.

* 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).

§ 1252. We review for abuse of discretion the denial of a motion to reopen. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008). We deny the petition for review.

The BIA acted within its broad discretion in determining the evidence was insufficient to establish changed country conditions in Guatemala. *See Maly v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) (“The critical question is . . . whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution.”).

Furthermore, the BIA did not abuse its discretion in denying the motion to reopen where the new evidence De Leon Mazariegos presented with his motion did not support prima facie eligibility for cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 600 (9th Cir. 2006).

De Leon Mazariegos’ contention that the BIA failed to consider all the evidence submitted with the motion fails, because he has not overcome the presumption that the BIA reviewed the record. *See id.* at 603.

De Leon Mazariegos’ remaining contentions are unavailing.

PETITION FOR REVIEW DENIED.