

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 09 2010

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

OSAMA ABDO MKHAEIL,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70705

Agency No. A079-682-941

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.

Osama Abdo Mkhail, a native and citizen of Syria, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252.

* 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).

Reviewing for abuse of discretion, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), we dismiss in part and deny in part the petition for review.

We lack jurisdiction over Mkhail's due process claims and his contentions regarding changed country conditions in Syria because he failed to exhaust these issues before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

The BIA did not abuse its discretion in denying Mkhail's motion to reopen because the motion was filed more than two and a half years after the BIA's order dismissing his underlying appeal, and did not fall within any exception to the 90-day filing limitation. *See* 8 C.F.R. § 1003.2(c)(2)-(3); *see also Matter of Velarde-Pacheco*, 23 I. & N. Dec. 253, 256 (BIA 2002) (motion to reopen to adjust status based on marriage to a U.S. citizen may be granted if, inter alia, the motion is timely filed).

We do not consider Mkhail's remaining contentions regarding the BIA's December 8, 2004, order because these contentions were rejected in *Mkhail v. Gonzales*, 05-70096 (9th Cir. Feb. 26. 2007).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.