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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERTO MARTINEZ LEYVA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-75989

Agency No. A095-303-201

MEMORANDUM*

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

Submitted July 22, 2008**
San Francisco, California

Before: B. FLETCHER, THOMAS and WARDLAW, Circuit Judges.

Roberto Martinez Leyva, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum and withholding of removal, and denying his motion to remand. We have jurisdiction under 8

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. We review for substantial evidence and will uphold the agency’s decision unless the evidence compels a contrary conclusion. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992). We review for abuse of discretion the denial of a motion to remand. *See Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). We deny the petition for review.

The record does not compel the conclusion that extraordinary circumstances excuse the untimely filing of Martinez Levya’s asylum application. *See* 8 C.F.R. § 1208.4(a)(5); *Husyev v. Mukasey*, 528 F.3d 1172, 1182 (9th Cir. 2008).

Accordingly, the asylum claim is denied. Because Martinez Levya did not raise the issue to the IJ or BIA, we lack jurisdiction to consider whether the agency erred in interpreting the term “minor” in 8 C.F.R. § 1208.4(a)(5)(ii) to refer to persons under eighteen years of age, as opposed to persons under twenty-one years of age. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (“Before a petitioner can raise an argument on appeal the petitioner must first raise it before the BIA or the IJ.”) (citing 8 U.S.C. § 1252(d)). We note that Martinez Levya was twenty-two years of age at the time of his merits hearing before the IJ and his appeal to the BIA.

We deny the petition with respect to the withholding of removal claim because Martinez Levya failed to show that the government, or groups that the

government is unable or unwilling to control, persecuted him in the past or that he faces a clear probability of future persecution by such groups or the Mexican government. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005).

The BIA did not abuse its discretion in denying Martinez Levya's motion to remand because the motion was not supported by evidence showing prima facie eligibility for relief. *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.