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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>WAJEER SINGH,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-73809

Agency No. A075-307-139

MEMORANDUM*

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

Submitted July 19, 2010 **

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

Wajeer Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying Singh's motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen, *see 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 denying Singh's motion to reopen because Singh failed to present material, previously unavailable evidence of changed circumstances in India, *see* 8 C.F.R. § 1003.2(c), and Singh failed to establish prima facie eligibility to reopen to apply for relief under the Convention Against Torture, *see Azanor v. Ashcroft*, 364 F.3d 1013, 1018 (9th Cir. 2004) ("To qualify for reopening under the Torture Convention, an alien must establish a prima facie case that 'it is more likely than not that ... she would be tortured if removed to the proposed country of removal.' ") (citing 8 C.F.R. § 208.16(c)(2)); *see also Cano-Merida*, 311 F.3d at 966.

Finally, we reject Singh's contention that the BIA failed to consider the relevant facts because he has not overcome the presumption that the BIA reviewed the record. *See Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006).

Singh's contention that the BIA failed to substantiate its decision is belied by the agency's order.

PETITION FOR REVIEW DENIED.