

AUG 30 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ERICK ALFONSO ESCOBAR,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-73629

Agency No. A072-707-977

MEMORANDUM*

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

Submitted August 10, 2010**

Before: O’SCANNLAIN, HAWKINS, and IKUTA, Circuit Judges.

Erick Alfonso Escobar, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen deportation proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review the

* 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).

BIA's factual findings for substantial evidence. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Escobar's motion to reopen as untimely because Escobar filed the motion over two years after the BIA's final administrative decision, *see* 8 C.F.R. § 1003.2(c)(2), and Escobar failed to establish changed circumstances in Guatemala to qualify for the regulatory exception to the time limitation, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also* *Najmabadi*, 597 F.3d at 991 (substantial evidence supported BIA's conclusion that evidence submitted with motion to reopen was not qualitatively different from the evidence presented at the original hearing).

We lack jurisdiction to review Escobar's ineffective assistance of counsel claim because he failed to exhaust it before the BIA. *See Puga v. Chertoff*, 488 F.3d 812, 815-16 (9th Cir. 2007).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.