

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>OSCAR O. PINEDA, a.k.a. Oscar Orlando Pineda,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 09-73610

Agency No. A094-203-281

MEMORANDUM\*

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

Submitted December 14, 2010\*\*

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Oscar O. Pineda, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s removal order and denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the

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\* 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).

denial of a motion to reopen, and review de novo questions. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir.2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Pineda's motion to reopen because his conviction for possession of cocaine base for sale, in violation of Cal. Health & Safety Code § 11351.5, is an aggravated felony under 8 U.S.C. § 1101(a)(43)(B), and he is therefore ineligible for cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1); *Rendon v. Mukasey*, 520 F.3d 967, 975-76 (9th Cir. 2008).

Pineda's contention regarding the burden of proof is not persuasive. *See* 8 C.F.R. § 1240.8(d).

Because Pineda has not contested removability under 8 U.S.C. § 1182(a)(6)(A)(i), we need not address his contentions regarding his removability under 8 U.S.C. § 1182(a)(2)(A)(i)(I) or (II).

**PETITION FOR REVIEW DENIED.**