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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROGELIO CONCHAS-FERNANDEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-73855

Agency No. A092-294-084

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Rogelio Conchas-Fernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to accept an untimely brief. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the BIA’s rejection of an untimely brief, *Zetino v.*

* 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).

Holder, 622 F.3d 1007, 1012 (9th Cir. 2010), and we deny in part and dismiss in part the petition for review.

The BIA was within its discretion in declining to accept Conchas-Fernandez's untimely brief. *See Zetino*, 622 F.3d at 1013 (concluding the applicable regulations indicate the BIA "could have considered" the brief, but it was under no obligation to do so, and the BIA did not act arbitrarily, irrationally, or contrary to the law in denying it). Conchas-Fernandez's contentions that the BIA did not adequately explain its reason for declining to accept the untimely brief or address his ineffective assistance of counsel claim are belied by the record. *Cf. Garcia-Gomez v. Gonzales*, 498 F.3d 1050, 1051 (9th Cir. 2007).

We lack jurisdiction to review Conchas-Fernandez's contentions regarding eligibility for a 212(c) waiver and voluntary departure because he failed to raise these issues before the BIA and thereby failed to exhaust his administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.