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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EUGENIO CONTRERAS-PELAYO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-73100

Agency No. A097-349-901

MEMORANDUM*

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

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Eugenio Contreras-Pelayo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *See Cano-Merida v. INS*,

* 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)*.

311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Contreras-Pelayo's motion to reopen because he failed to demonstrate the evidence he submitted was previously unavailable. *See* 8 C.F.R. § 1003.2(a), (c); *Bhasin v. Gonzales*, 423 F.3d 977, 984 (9th Cir. 2005).

The court lacks jurisdiction to review Contreras-Pelayo's ineffective assistance of counsel contention because he did not exhaust that claim before the BIA. *See Puga v. Chertoff*, 488 F.3d 812, 815-16 (9th Cir. 2007).

We lack jurisdiction to review the BIA's underlying April 15, 2008, order dismissing Contreras-Pelayo's direct appeal because this petition for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.