

MAR 10 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NOEL ESTUARDO TUCHEZ-  
ORDONEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-72767

Agency No. A096-385-801

MEMORANDUM\*

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

Submitted February 15, 2011\*\*

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Noel Estuardo Tuche-Ordonez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order denying his motion to reopen removal proceedings.

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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).

The BIA did not abuse its discretion in denying, as untimely, petitioner's motion to reopen where the motion was filed more than two years after the BIA's final order. *See* 8 C.F.R. § 1003.2(c)(2). The BIA acted within its broad discretion in determining that the evidence was insufficient to establish changed country conditions in Guatemala. *See* 8 U.S.C. § 1229a(c)(7)(C)(ii); *Marty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) (“the critical question is . . . whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution.”)

Tuchez-Ordonez's contention that the BIA failed to properly consider all the evidence submitted with the motion fails 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).

**PETITION FOR REVIEW DENIED.**