

MAR 15 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BALWINDER SINGH MALHI,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-73279

Agency No. A075-302-081

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.

Balwinder Singh Malhi, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order 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 of law. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying Malhi's motion to reopen as time- and number-barred because the successive motion was filed more than three years after the BIA's June 10, 2003, order dismissing his underlying appeal. *See* 8 C.F.R. § 1003.2(c)(2) (only one motion to reopen permitted and the motion generally must be filed within 90 days of the final order). It follows that Malhi's due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

Malhi's remaining contentions are unpersuasive.

We deny Malhi's motion to supplement the record, *see* 8 U.S.C. § 1252(b)(4)(A), and we deny respondent's motion to dismiss.

**PETITION FOR REVIEW DENIED.**