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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RICHARD BERNARD,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-74526

Agency No. A071-781-322

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

Richard Bernard, a native and citizen of India, petitions for review of a Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for suspension of deportation as a battered spouse, and denying his motion to reopen. We have jurisdiction

* 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).

under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual determinations, *Hernandez v. Ashcroft*, 345 F.3d 824, 832 (9th Cir. 2003), and for abuse of discretion the denial of a motion to reopen, *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002). We deny the petition for review.

Substantial evidence supports the BIA’s conclusion that Bernard failed to establish he was battered or subject to extreme cruelty by his former spouse. *See* 8 U.S.C. § 1254(a)(3) (repealed 1996); *cf. Hernandez*, 345 F.3d at 840-41.

The BIA did not abuse its discretion by denying Bernard’s motion to reopen, because his new evidence addressed only hardship resulting from removal and did not address the dispositive finding that Bernard failed to show he had been subjected to extreme cruelty or battery, and he therefore could not establish prima facie eligibility for suspension of deportation as a battered spouse. *See Singh*, 295 F.3d at 1039 (The BIA’s denial of a motion to reopen shall be reversed if it is “arbitrary, irrational, or contrary to law.”).

PETITION FOR REVIEW DENIED.