

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 29 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ELIOT OSWALDO POCASANGRE,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70629

Agency No. A097-877-669

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O'SCANNLAIN, and FISHER, Circuit Judges

Eliot Oswaldo Pocasangre, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") removal order. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law, *Barrios v. Holder*, 581 F.3d

* 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).

849, 854 (9th Cir. 2009), and review for abuse of discretion the denial of a motion to remand, *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1062 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

The BIA did not err in finding that Pocasangre failed to establish the seven years of continuous physical presence required under 8 C.F.R. § 1240.66(b)(2) to be eligible for derivative special rule cancellation of removal. *See* 8 C.F.R. § 1240.61(a)(4); *Barrios*, 581 F.3d at 858-59.

The BIA did not abuse its discretion in denying Pocasangre's request to remand to the IJ to apply for asylum where he had not applied for asylum before the IJ and failed to demonstrate that he sought relief based on circumstances that arose subsequent to his hearing. *See* 8 C.F.R. § 1003.2(c)(1); *Romero-Ruiz*, 538 F.3d at 1063-64.

We lack jurisdiction to review Pocasangre's remaining contentions because he failed to raise them before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (generally requiring exhaustion of claims before the agency).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.

