FILED

JUL 25 2011

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

# UNITED STATES COURT OF APPEALS

## FOR THE NINTH CIRCUIT

VICTOR OSWALDO GUERRA
BAUTISTA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70654

Agency No. A095-184-895

MEMORANDUM[*]

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

Submitted July 12, 2011[**]

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Victor Oswaldo Guerra Bautista, a native and citizen of Guatemala, petitions

for review of the Board of Immigration Appeals' ("BIA") order denying his

motion to reopen proceedings based on ineffective assistance of counsel. We have

jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of

---

[*]    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).

a motion to reopen, and we review de novo questions of law, including claims of ineffective assistance of counsel. *Hernandez v. Mukasey*, 524 F.3d 1014, 1017 (9th Cir. 2008). We deny the petition for review.

The BIA did not abuse its discretion in denying Guerra Bautista's motion to reopen on the ground that he failed to show he was prejudiced by his former counsel's conduct. *See Iturribarria v. INS*, 321 F.3d 889, 899-90 (9th Cir. 2003) (prejudice results when the performance of counsel "was so inadequate that it may have affected the outcome of the proceedings") (internal quotation marks omitted).

Guerra Bautista's contention that an immigration consultant provided him with ineffective assistance of counsel is foreclosed. *See Hernandez*, 524 F.3d at 1020 (knowing reliance upon the advice of a non-attorney cannot support a claim for ineffective assistance of counsel in a removal proceeding).

**PETITION FOR REVIEW DENIED.**