

JUN 29 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>RAFAEL GARCIA-FRANCO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p> |
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No. 11-72512

Agency No. A095-310-031

MEMORANDUM*

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

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS and GOULD, Circuit Judges.

Rafael Garcia-Franco, a native and citizen of Mexico, petitions pro se for review of the decision of the Board of Immigration Appeals, denying as untimely filed and numerically barred, petitioner’s second motion to reopen removal

* 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).

proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008), and we deny the petition for review.

Garcia-Franco contends that he merits cancellation of removal relief because his United States citizen children will experience the requisite hardship if he is removed to Mexico.

By not raising any arguments concerning the BIA's dispositive determination that his second motion to reopen was numerically-barred and untimely, Garcia-Franco has waived any challenge to that determination. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996). Moreover, the BIA did not abuse its discretion in denying Garcia-Franco's second motion to reopen as numerically-barred and untimely where the motion was filed over six years after the BIA's final order. *See* 8 C.F.R. § 1003.2(c)(2).

PETITION FOR REVIEW DENIED.