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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GANESH BAHADUR GURUNG,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-73837

Agency No. A075-758-987

MEMORANDUM*

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

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Ganesh Bahadur Gurung, a native and citizen of Nepal, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his second motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We

* 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).

review for abuse of discretion the denial of a motion to reopen, *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008), and we deny the petition for review.

The BIA did not abuse its discretion in denying Gurung's motion to reopen as untimely because the motion was filed over five years after the BIA's final decision, *see* 8 C.F.R. § 1003.2(c)(2), and Gurung did not establish prima facie eligibility for relief, *see Toufighi*, 538 F.3d at 996-97 (evidence must demonstrate prima facie eligibility for relief warranting reopening based on changed country conditions).

We reject Gurung's challenges to the underlying denial of relief by the immigration judge and the BIA, because those issues were decided by the court in *Gurung v. Gonzales*, No. 03-72571 (9th Cir. 2006).

PETITION FOR REVIEW DENIED.