

SEP 14 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIO HERNANDEZ GONZALEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 10-73086

Agency No. A096-070-573

MEMORANDUM*

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

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Mario Hernandez Gonzalez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his 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 an abuse of discretion the BIA’s denial of a motion to reopen. *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008). We deny the petition for review.

The BIA did not abuse its discretion in denying Hernandez Gonzalez’s motion to reopen because it considered the record and acted within its broad discretion in determining that Hernandez Gonzalez failed to demonstrate that he would suffer harm rising to the level of persecution or torture. *See Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010) (the BIA can deny a motion to reopen for failure to establish prima facie eligibility for the relief sought); *Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003) (being “teased, bothered, discriminated against and harassed” did not compel a finding that there was persecution); *Al-Safer v. INS*, 268 F.3d 1143, 1147 (9th Cir. 2001) (“Torture is an extreme form of cruel and inhuman conduct[.]”) (internal quotes omitted).

In light of this disposition, we do not address Hernandez Gonzalez’s contentions regarding social group, whether the BIA failed to do an individualized analysis of whether his son’s risk of harm, or whether he needs to show less individual harm because there is group-wide persecution of the disabled in Mexico.

PETITION FOR REVIEW DENIED.