

NOV 19 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN ENRIQUEZ GARCIA, a.k.a. Juan
Gabriel Garcia,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-70128

Agency No. A091-743-506

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Juan Enriquez Garcia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing an immigration judge's denial of his motion to reopen alleging ineffective assistance of counsel.

* 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).

We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo due process claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying Garcia's motion to reopen on the ground that his prior counsel's decision to withdraw Garcia's applications for relief and accept voluntary departure constituted a tactical decision. *See Magallanes-Damian v. INS*, 783 F.2d 931, 934 (9th Cir. 1986) (concluding that attorney's tactical decision did not constitute ineffective assistance of counsel).

PETITION FOR DENIED.