

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 20 2013

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

GUMERCINDO EVERISARIO
CUCHILLA-VENTURA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-73798

Agency No. A079-417-450

MEMORANDUM*

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

Submitted February 11, 2013**

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Gumercindo Everisario Cuchilla-Ventura, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. 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 BIA's denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny the petition for review.

The BIA did not abuse its discretion in denying Cuchilla-Ventura's untimely motion to reopen where Cuchilla-Ventura did not show that his newly submitted evidence was previously unavailable. *See* 8 C.F.R. §§ 1003.2(c)(1), (c)(3)(ii); *Goel v. Gonzales*, 490 F.3d 735, 738 (9th Cir. 2007) (per curiam) (evidence that is available or capable of being discovered at time of hearing cannot serve as basis for motion to reopen). Further, Cuchilla-Ventura does not raise any challenge to the BIA's dispositive finding that his evidence did not address the issue of changed circumstances.

PETITION FOR REVIEW DENIED.