UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 31 2013

JULIAN PINEDA-MURALLES,	No. 12-70415
Petitioner,	Agency No. A072-911-232
v.	
ERIC H. HOLDER, Jr., Attorney General,	MEMORANDUM[*]
Respondent.	

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

Submitted July 24, 2013[**]

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Julian Pineda-Muralles, a native and citizen of Guatemala, petitions for

review of the Board of Immigration Appeals' ("BIA") order denying his motion to

reopen removal proceedings and reconsider its previous decision. Our jurisdiction

is governed by 8 U.S.C. § 1252. We dismiss in part and deny in part the petition

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[*] 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).

for review.

We lack jurisdiction to review the BIA's determination that the evidence Pineda-Muralles submitted with his motion to reopen was insufficient to warrant reopening where the evidence presented concerns the same discretionary grounds involved in the original decision. *See Fernandez v. Gonzales*, 439 F.3d 592, 600-01 (9th Cir. 2006).

To the extent Pineda-Muralles contends that the BIA abused its discretion by failing to exercise its authority to sua sponte reconsider or reopen his case, we lack jurisdiction to consider that issue. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011).

In his opening brief, Pineda-Muralles fails to raise, and therefore has waived, any challenge to the BIA's determination that his motion to reconsider was untimely. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011). In light of this disposition, we need not reach Pineda-Muralles's remaining challenges to the BIA's denial of his motion to reconsider.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.

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