

DEC 17 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICARDO MONTESINOS-BONILLA

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 15-70046

Agency No. A070-153-956

MEMORANDUM*

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

Submitted December 9, 2015**

Before: WALLACE, RAWLINSON, and IKUTA, Circuit Judges.

Ricardo Montesinos-Bonilla, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his second motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the agency's denial of a motion to

* 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).

reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny in part and dismiss in part the petition for review.

We deny Montesinos-Bonilla's motion to take judicial notice of the new materials he submitted for the first time in support of his opening brief. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc) (the court's review is limited to the administrative record); *cf. Lising v. INS*, 124 F.3d 996, 998-99 (9th Cir. 1997) (taking judicial notice of agency's own records that falsified the basis on which the BIA relied).

The BIA did not abuse its discretion in denying Montesinos-Bonilla's motion to reopen as time and number barred, where he filed his second motion over seven years after his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and he failed to submit new and material evidence demonstrating a material change in El Salvador to qualify for the regulatory exception to the time and number limitations for filing motions to reopen, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also Najmabadi*, 597 F.3d at 988-90 (new evidence lacked materiality). We reject Montesinos-Bonilla's contentions that the BIA failed to consider reports he submitted with his motion to reopen and failed to accept as true facts stated in his declaration. *See Najmabadi*, 597 F.3d at 990 (BIA "adequately considered [petitioner's] evidence and sufficiently announced its decision").

Finally, the court lacks jurisdiction to review the BIA's refusal to reopen proceedings sua sponte. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.