

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 1 2016

FOR THE NINTH CIRCUIT

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

PASTOR VEGA-RAYO,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-72812

Agency No. A095-297-004

MEMORANDUM*

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

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Respondent's request to lift the stay of proceedings (Docket Entry No. 25) is granted.

Pastor Vega-Rayo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

and reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Vega-Rayó's motion to reconsider because Vega-Rayó failed to identify any error of law or fact in the BIA's prior order. *See* 8 C.F.R. § 1003.2(b)(1).

The BIA did not abuse its discretion in denying Vega-Rayó's motion to reopen because it was untimely and number-barred, *see* 8 C.F.R. §1003.2(c)(2), and Vega-Rayó failed to demonstrate he qualified for an exception to the time and number limits for filing a motion to reopen, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *Toufighi v. Mukasey*, 538 F.3d 988, 996 (9th Cir. 2008) (the BIA may deny a motion to reopen based on changed circumstances for failure to establish "prima facie eligibility for the relief sought"). We lack jurisdiction to consider Vega-Rayó's contentions as to membership in a particular social because he did not raise them to the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (petitioner must exhaust claims in administrative proceedings below).

Finally, we lack 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); *cf. Bonilla v. Lynch*, No. 12-73853, 2016 WL 3741866 (9th Cir. July 12, 2016).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.