

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 19 2018

FOR THE NINTH CIRCUIT

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

MARTIN SALMALANCA-PADILLA,
AKA Martin Salamanca-Padilla,

Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

No. 14-73453

Agency No. A073-130-374

MEMORANDUM*

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

Submitted March 13, 2018**

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Martin Salamanca-Padilla, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. 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 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).

review for abuse of discretion the denial of a motion to reopen and review de novo questions of law. *Bonilla v. Lynch*, 840 F.3d 575, 581 (9th Cir. 2016). We deny the petition for review.

The BIA did not abuse its discretion in denying Salamanca-Padilla's motion to reopen so that he could pursue an I-601A provisional unlawful presence waiver, where Salamanca-Padilla failed to establish prima facie eligibility for that waiver. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1080 (9th Cir. 2013); 8 C.F.R. § 212.7(e)(3), (4) (2013).

Salamanca-Padilla's contention that the BIA failed to recognize that it had authority to reopen as a matter of discretion is belied by the BIA's statement that it declined to exercise its discretion to reopen sua sponte under 8 C.F.R. § 1003.2(a). *Cf. Singh v. Holder*, 771 F.3d 647, 653 (9th Cir. 2014) (the BIA's denial of a motion to reopen on jurisdictional grounds was legal error, and thus an abuse of discretion, because the BIA had authority to reopen under 8 C.F.R. § 1003.2(a)).

Salamanca-Padilla's motion to stay removal (Docket Entry No. 27) is denied as moot. The temporary stay of removal will expire upon issuance of the mandate.

PETITION FOR REVIEW DENIED.