

JAN 27 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IGNACIO AGUILAR-IXTAS,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-70361

Agency No. A095-774-309

MEMORANDUM*

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

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Ignacio Aguilar-Ixtas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Mohammed v. Gonzales*,

* 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).

400 F.3d 785, 791 (9th Cir. 2005), and we deny in part and dismiss in part the petition for review.

Aguilar-Ixtas did not raise, and has therefore waived, any challenge to the BIA's denial of his motion as untimely. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (issues not raised in the opening brief are waived).

The record does not support Aguilar-Ixtas' contention that the BIA failed to consider the correct basis for his hardship claim, where the BIA's decision evaluated hardship "upon remaining in this country or upon returning" to Mexico.

We lack jurisdiction to review the BIA's decision not 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.