

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 21 2018

FOR THE NINTH CIRCUIT

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

JOAQUIN LEDESMA-CONCHAS,

No. 16-73761

Petitioner,

Agency No. A075-879-554

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted May 15, 2018**

Before: SILVERMAN, BEA, and WATFORD, Circuit Judges.

Joaquin Ledesma-Conchas, 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 review for abuse of discretion the denial of a motion to reopen and review de novo

* 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). Joaquin Ledesma-Conchas' request for oral argument, set forth in his opening brief, is denied.

questions of law, including claims of due process violations. *Singh v. Ashcroft*, 367 F.3d 1182, 1185 (9th Cir. 2004). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Ledesma-Conchas' second motion to reopen as untimely and number-barred where the motion was filed more than four years after the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and where Ledesma-Conchas failed to demonstrate prima facie eligibility for asylum that would invoke the changed country conditions exception to the filing deadline, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228 (9th Cir. 2016) (the BIA may deny a motion to reopen for failure to establish prima facie eligibility for the relief sought); *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (an applicant's "desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground").

We lack jurisdiction to review the agency's discretionary decision not to reopen proceedings sua sponte, where Ledesma-Conchas fails to raise a colorable constitutional claim or question of law about the sua sponte determination that would invoke our jurisdiction. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011); *cf. Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016) ("[T]his court has jurisdiction to review Board decisions denying sua sponte

reopening for the limited purpose of reviewing the reasoning behind the decisions for legal or constitutional error.”).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.