

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 10 2020

FOR THE NINTH CIRCUIT

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

ANTONIO ORTIZ-OJEDA,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 18-71119

Agency No. A075-720-003

MEMORANDUM*

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

Submitted February 4, 2020**

Before: FERNANDEZ, SILVERMAN, and TALLMAN, Circuit Judges.

Antonio Ortiz-Ojeda, a native and citizen of Mexico, petitions pro se 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. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the

* 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).

petition for review.

The BIA did not abuse its discretion in denying Ortiz-Ojeda's seventh motion to reopen as untimely and number-barred, where it was filed 12 years after his final removal order, *see* 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2), and he has waived any challenge to the BIA's determination that the exception for changed country conditions did not apply, *see Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not raised in the opening brief are deemed waived).

The BIA also did not abuse its discretion in declining to equitably toll the time- and number-bars, where Ortiz-Ojeda failed to comply with the procedural requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). *See Singh v. Holder*, 658 F.3d 879, 884 (9th Cir. 2011) (to qualify for equitable tolling for a motion to reopen based on ineffective assistance of counsel a petitioner must comply with *Lozada*).

We lack jurisdiction to review the agency's denial of sua sponte reopening. *See Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016).

We lack jurisdiction to consider Ortiz-Ojeda's contentions regarding the denial of his application for cancellation of removal because he failed to raise these contentions before the BIA in his motion to reopen. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (generally requiring exhaustion of claims before the

BIA).

We also lack jurisdiction to consider the due process claim that Ortiz-Ojeda raises for the first time in his opening brief because he did not exhaust this claim before the agency. *See id.* at 678.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.