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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADAN REYNOSO CISNEROS, Petitioner, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	Nos. 05-72196 05-74830 Agency No. A75-301-399 MEMORANDUM[*]

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted August 26, 2008[**]

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Adan Reynoso Cisneros, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen

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[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

based on ineffective assistance of counsel and its order denying his motion to reconsider and reopen based on new evidence. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen or reconsider, and review de novo due process claims. *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005). We deny the petitions for review.

The BIA did not abuse its discretion by denying the two motions because Reynoso Cisneros failed to establish prejudice. *See Iturribarria v. INS*, 321 F.3d 889, 899 (9th Cir. 2003) (alien must demonstrate prejudice from counsel's ineffective assistance to establish due process violation). The only additional evidence Reynoso Cisneros provided of his continuous physical presence from 1987 to 1992 is his brother's declaration, yet the declaration is internally inconsistent regarding when his brother lived in Marysville. The new evidence is therefore insufficient to establish that counsel's performance "may have affected the outcome of the proceedings." *Id*. at 899-900 (internal quotation marks and citations omitted). Because Reynoso Cisneros did not establish prejudice regarding continuous physical presence, it was unnecessary for the BIA to address his new hardship evidence. *See* 8 U.S.C. § 1229b(b)(1).

PETITIONS FOR REVIEW DENIED.