

**OCT 04 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

DANIEL ZURITA-VASQUEZ,

Petitioner,

v.

PETER D. KEISLER,\* Acting Attorney  
General,

Respondent.

No. 05-76663

Agency No. A35-862-161

**ORDER AND  
MEMORANDUM\*\***

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

Argued and Submitted September 26, 2007  
San Francisco, California

Before: GIBSON\*\*\*, BERZON, and BEA, Circuit Judges.

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\* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

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

\*\*\* The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Daniel Zurita-Vasquez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") removal order. Zurita-Vasquez conceded below, and the IJ found, that a 2002 forgery conviction renders him removable as an aggravated felon pursuant to INA § 101(a)(43)(R). The IJ further found Zurita-Vasquez ineligible for any form of discretionary relief.

1. We have jurisdiction to review a finding of statutory ineligibility for discretionary relief, *Moran v. Ashcroft*, 395 F.3d 1089, 1091 (9th Cir. 2005), but Zurita-Vasquez is not eligible for any of the discretionary relief he seeks. His argument that he is eligible to apply for cancellation of removal is unavailing, as the statute plainly excludes aliens who have been "convicted of any aggravated felony." INA § 240A(a)(3). His argument that he is eligible to apply for a waiver under former INA § 212(c) for a 1991 conviction also fails, as the 1991 conviction was not the ground on which he was found removable.

2. Zurita-Vasquez also challenges the IJ's failure to grant a continuance so that he could file a motion in California Superior Court to vacate his 2002 forgery conviction. As he presents no constitutional claims or questions of law with respect to this issue, however, we lack jurisdiction to review the decision. 8 U.S.C. § 1252(a)(2).

3. One week before oral argument, Zurita-Vasquez moved to remand the case to the BIA because the vacatur of two California Superior Court orders sentencing him for probation violations allegedly reduced his sentence for the forgery conviction to less than one year.

The proper vehicle for introducing new evidence is by motion to the BIA to reopen removal proceedings, a step that Zurita-Vasquez has not taken. Although such a motion may now be untimely, *see* 8 C.F.R. § 1003.2(c)(2), Zurita-Vasquez could seek the Department of Homeland Security's joinder in the motion or could ask the BIA to reopen the case *sua sponte*. *See* 8 C.F.R. § 1003.2(a), (c)(3)(iii). As this Court's review is limited to the administrative record, 8 U.S.C. § 1252(b)(4)(A), we cannot consider the new evidence submitted with the motion. The motion to remand is therefore DENIED.

Petition for review DENIED.