

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 12 2008

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

NEHEMIAS EDMUNDO RAMIREZ  
RICARDO,

Petitioner,

v.

MICHAEL B. MUKASEY,\*\* Attorney  
General,

Respondent.

No. 07-70352

Agency No. A95-305-158

MEMORANDUM\*

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

Submitted September 8, 2008\*\*

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

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

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

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

Nehemias Edmundo Ramirez Ricardo, a native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals' denial of his second motion to reopen as numerically barred. In the motion to reopen, petitioner sought to apply for protection under the Convention Against Torture ("CAT") following the underlying denial of his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

Petitioner contends that the numerical bar to his motion to reopen should not prevent consideration of his motion because he established an exception to the bar by demonstrating that there are changed country conditions in Guatemala giving rise to his prima facie eligibility for relief under CAT.

The BIA acted within its discretion in concluding that petitioner's second motion to reopen was numerically barred. *See* 8 C.F.R. § 1003.2(c). Petitioner failed to demonstrate changed country conditions to establish an exception to that bar. *See Konstaninova v. INS*, 195 F.3d 528, 530 (9th Cir. 1999).

**PETITION FOR REVIEW DENIED.**