

JAN 28 2008

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

NOT FOR PUBLICATION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

DALJIT SINGH,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-73701

Agency No. A95-570-874

MEMORANDUM*

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

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Daljit Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings and reconsider its prior order affirming an immigration judge's ("IJ")

* 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).

order of removal. To the extent we have jurisdiction it is pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen or reconsider, *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005), and we grant in part and dismiss in part the petition for review.

The BIA abused its discretion in denying Singh's motion to reconsider because the record reflects that, contrary to the BIA's statement, Singh requested voluntary departure. *See* 8 C.F.R. § 1003.2(b)(1) (a motion to reconsider can be based on an error of fact in a prior BIA decision). The BIA also failed to address the other arguments in Singh's motion to reconsider. *See Singh v. Gonzales*, 416 F.3d 1006, 1015 (9th Cir. 2005) (remanding in light of BIA's unexplained failure to address petitioner's claim).

The BIA abused its discretion when it failed to explain why Singh's motion to reopen did not set out a prima facie case for adjustment of status. *See Franco-Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006) (holding that the BIA abuses its discretion when it fails to fully explain its reasons for denying a motion to reopen).

To the extent Singh attempts to challenge the BIA's March 30, 2005 decision, we lack jurisdiction because this petition is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

In light of our disposition, we need not reach Singh's due process claims.

**PETITION FOR REVIEW GRANTED in part; DISMISSED in part;
REMANDED.**