

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 28 2008

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

SILVESTRE CAMARGO DIAZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-75973

Agency No. A96-064-451

MEMORANDUM*

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

Submitted April 22, 2008**

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Silvestre Camargo Diaz, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to

* 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).

reopen removal proceedings in which an immigration judge (“IJ”) pretermitted his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the BIA’s denial of a motion to reopen. *Ordonez v. INS*, 345 F.3d 777, 782 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in concluding that Camargo Diaz failed to demonstrate prima facie eligibility for cancellation of removal. *See id.* at 785 (a motion to reopen must establish prima facie eligibility for underlying relief). The record before the BIA did not establish that Camargo Diaz had a qualifying relative for purposes of his application for cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1) (listing requirements for cancellation of removal for nonpermanent residents).

We lack jurisdiction to review Camargo Diaz’s challenge to the BIA’s underlying order dismissing his direct appeal from the IJ’s decision because this petition for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.