

APR 29 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SALVADOR URIBE ESPINOSA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-75236

Agency No. A95-294-778

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.

Salvador Uribe Espinosa, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' denial of his motion to reopen the

* 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).

BIA's underlying denial of his application for cancellation of removal based on petitioner's failure to establish exceptional and extremely unusual hardship to his qualifying relatives. In his motion, which the BIA construed as a motion to reconsider, petitioner renewed his argument that his long-term permanent resident parents and his two United States citizen children would experience exceptional and extremely unusual hardship. We dismiss the petition for review.

The argument that petitioner presented in his motion to reconsider concerned the same basic hardship grounds as his application for cancellation of removal, and we therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 601-03 (9th Cir. 2006). We lack jurisdiction to consider petitioner's challenge to the underlying removal order because the petition for review is not timely as to that order. *See* 8 U.S.C. § 1252(b)(1).

PETITION FOR REVIEW DISMISSED.