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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SURENDER KUMAR-GARG,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-73131

Agency No. A97-762-138

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.

Surender Kumar-Garg, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's order denying his motion to reconsider the denial of a motion

* 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).

to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *Ordonez v. INS*, 345 F.3d 777, 782 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in concluding that Kumar-Garg was not prima facie eligible for special rule cancellation of removal under 8 U.S.C. § 1229b(b)(2)(A)(ii) because he was unable to establish the requisite 3-year period of continuous physical presence in the United States. *See Ordonez*, 345 F.3d at 785 (“[A] motion to reopen will not be granted unless the respondent establishes a prima facie case of eligibility for the underlying relief sought.”).

PETITION FOR REVIEW DENIED.