

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 08 2008

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

ANDRO KHODABAKHSH,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-74701

Agency No. A29-478-014

MEMORANDUM*

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

Submitted June 18, 2008**

Before: REINHARDT, W. FLETCHER, and CLIFTON, Circuit Judges.

Andro Khodabakhsh, a native and citizen of Iran, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen and reconsider. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of

* 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).

discretion, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), we deny the petition for review.

The BIA properly construed Khodabakhsh's August 3, 2004 motion as both a motion to reopen and a motion to reconsider. *See* 8 C.F.R. §§ 1003.2(b)(1), (c)(1) (a motion to reconsider specifies errors of fact or law in the prior decision while a motion to reopen states new facts to be proven at a hearing). The BIA did not abuse its discretion in denying Khodabakhsh's motion to reconsider as untimely because it was filed nearly three months after the BIA's prior order. *See id.* § 1003.2(b)(2) (a motion to reconsider must be filed within 30 days of the final administrative decision).

The BIA did not abuse its discretion in denying Khodabakhsh's motion to reopen because he failed to present evidence to support any of his contentions. *See id.* § 1003.2(c)(1) (a motion to reopen "shall be supported by affidavits or other evidentiary material"); *see also Membreno v. Gonzales*, 425 F.3d 1227, 1229 (9th Cir. 2005) (en banc) ("The BIA properly denied [petitioner's] motion to reopen because [petitioner] presented the BIA with no new facts, but only new legal arguments.").

PETITION FOR REVIEW DENIED.