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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ISHMEAL MOHAMMED,</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>

No. 04-74839

Agency No. A74-208-746

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.

Ishmeal Mohammed, a native and citizen of Trinidad and Tobago, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his request for a § 212(h)

* 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).

waiver, and denying his motion to reopen based on the later expungement of his conviction for attempted fraud. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of motions to reopen. *Maravilla v. Ashcroft*, 381 F.3d 855, 857 (9th Cir. 2004) (per curiam). We deny the petition for review.

Mohammed has waived any challenge to the BIA's determination that he is statutorily ineligible for a 212(h) waiver. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived).

The BIA did not abuse its discretion in denying Mohammed's motion to reopen because Mohammed's attempted fraud conviction despite its expungement is valid for immigration purposes. *See Nath v. Gonzales*, 467 F.3d 1185, 1188-89 (9th Cir. 2006) (a vacated conviction can serve as the basis for removal if the conviction was vacated for equitable, rehabilitation or immigration hardship reasons); *see also Murillo-Espinoza v. INS*, 261 F.3d 771, 774 (9th Cir. 2001).

PETITION FOR REVIEW DENIED.