

SEP 27 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID LUNA-CARO,

Petitioner,

v.

PETER D. KEISLER,* Acting Attorney
General,

Respondent.

Nos. 03-73598
06-71281

Agency No. A77-110-832

MEMORANDUM**

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

Submitted September 24, 2007 ***

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

In these consolidated petitions, David Luna-Caro, a native and citizen of

* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

** 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).

Mexico, seeks review of the Board of Immigration Appeals' ("BIA") orders denying his two motions to reopen cancellation of removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petitions for review.

The BIA did not abuse its discretion in denying Luna-Caro's first motion to reopen based on ineffective assistance of counsel because Luna-Caro did not demonstrate prejudice. *Id.* at 899-900.

The BIA did not abuse its discretion in denying Luna-Caro's second motion to reopen as untimely because it was filed more than two years after the BIA's final order of removal, *see* 8 U.S.C. § 1229a(c)(7)(C)(I) (stating that motion to reopen shall be filed within 90 days of final order of removal). Luna-Caro also presented insufficient evidence that he was continuously present in the United States from April 9, 1989 to November 24, 1990. *See Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850 (9th Cir. 2004) (requiring ten years of continuous physical presence to qualify for cancellation of removal as a threshold matter). He therefore did not show prima facie eligibility for relief. *See INS v. Wang*, 450 U.S. 139, 145 (1981) (per curiam).

To the extent Luna-Caro challenges the agency's hardship determination, we lack jurisdiction to review it. *See Romero-Torres v. Ashcroft*, 327 F.3d 887,

890 (9th Cir. 2003).

Luna-Caro's remaining contentions are not persuasive.

PETITION FOR REVIEW DENIED. (03-73598)

PETITION FOR REVIEW DENIED. (06-71281)