

SEP 27 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

FERNANDO CARLOS MINAYA
CARBAJAL,

Petitioner,

v.

PETER D. KEISLER,* Acting Attorney
General,

Respondent.

No. 05-76515

Agency No. A70-967-693

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.

* 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).

Fernando Carlos Minaya Carbajal, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen to adjust status. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion, *de Martinez v. Ashcroft*, 374 F.3d 759, 761 (9th Cir. 2004), and we deny the petition for review.

The BIA did not abuse its discretion in denying Carbajal's motion to reopen on the ground that he overstayed his voluntary departure period and so was ineligible for adjustment of status. *See* 8 U.S.C. 1229c(d) (alien who overstays voluntary departure period ineligible to adjust status for ten years). Even if Carbajal's voluntary departure period was tolled while his motion to reconsider was pending, the period had expired by the time he filed his motion to reopen.

Carbajal's remaining contentions lack merit.

PETITION FOR REVIEW DENIED.