

SEP 28 2007

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAJESH SINGH,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 05-74016

Agency No. A78-650-783

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.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** 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).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rajesh Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings due to ineffective assistance of counsel. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion and review factual findings for substantial evidence. *Mohammad v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

Substantial evidence supports the BIA's determination that Singh failed to demonstrate that his former counsel acted ineffectively. *See id.* at 793 (recognizing that to prevail on an ineffective assistance of counsel claim a petitioner must demonstrate that counsel failed to perform with sufficient competence). The record supports the BIA's determination that Singh's former counsel notified Singh of the BIA's order dismissing his appeal from the immigration judge's decision. The BIA also properly concluded that Singh failed to establish that he engaged his former counsel to file an adjustment application on his behalf. Accordingly, in denying the motion to reopen the BIA did not act "arbitrarily, irrationally or contrary to law." *Id.* at 791.

PETITION FOR REVIEW DENIED.