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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PASCUAL AOUILINO GAYOSO
BERNAL, a/k/a Gustavo Aguilar-Bustos,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-75108

Agency No. A79-538-013

MEMORANDUM *

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

Submitted November 13, 2007 **

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Pascual Aouilino Gayoso Bernal, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his

* 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).

motion to reconsider. To the extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider. *See Oh v. Gonzales*, 406 F.3d 611, 612 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA properly construed Gayoso Bernal's motion to reopen as a motion to reconsider because the motion did not include new evidence. *See* 8 C.F.R. § 1003.2(c)(1). The BIA was within its discretion in denying the motion to reconsider because the motion failed to identify any error of fact or law in the BIA's prior decision affirming the IJ's order denying cancellation of removal based on physical presence grounds. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc); *see also Landin-Zavala v. Gonzales*, 488 F.3d 1150, 1153 (9th Cir. 2007) (holding that an executed order of exclusion and subsequent deportation terminates continuous physical presence).

We lack jurisdiction to review the BIA's June 7, 2005 order upholding the denial of Gayoso Bernal's cancellation application because he failed to timely petition this court for review of that decision. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.