

DEC 28 2007

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSE BUSTOS MORALES,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-70978

Agency No. A77-858-238

MEMORANDUM*

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

Submitted December 20, 2007**

Before: GOODWIN, WALLACE, and HAWKINS, Circuit Judges.

Jose Bustos Morales petitions for review of an order of the Board of
Immigration Appeals (“BIA”) denying his motion to reconsider and reopen

* 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).

removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review the denial of a motion to reopen for an abuse of discretion, *see Konstantinova v. INS*, 195 F.3d 528, 529 (9th Cir. 1999), and we deny in part and grant in part the petition for review.

The BIA considered the new evidence Bustos Morales submitted regarding his daughter Elena and acted within its broad discretion in determining that the evidence was insufficient to warrant reopening. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (The BIA’s denial of a motion to reopen shall be reversed if it is “arbitrary, irrational, or contrary to law.”).

The BIA abused its discretion in failing to address Bustos Morales’ motion to reconsider and we remand for further consideration. *See Singh v. Gonzales*, 416 F.3d 1006, 1015 (9th Cir. 2005) (remanding in light of BIA’s unexplained failure to address petitioner’s claim).

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**