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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO ACOSTA-PONCE, Petitioner, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 06-74836 Agency No. A028-818-912 MEMORANDUM[*]

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

Submitted December 17, 2008[**]

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Francisco Acosta-Ponce, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review the denial of a motion

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[*] 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).

/Research

to reopen for abuse of discretion. *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008). We deny the petition for review in part and dismiss it in part.

The BIA acted within its discretion in denying Acosta-Ponce's motion to reopen where he failed to contest his deportability on appeal to the BIA and submitted no new evidence calling the agency's deportability determination into question. *See* 8 C.F.R. §§ 1003.2(a), (c). Moreover, we are unpersuaded by Acosta-Ponce's contention that the agency applied an incorrect legal standard in denying his relief application. *See Ayala-Chavez v. INS*, 944 F.2d 638, 640-41 (9th Cir. 1991) (discussing "outstanding equities" standard).

To the extent that Acosta-Ponce challenges the agency's discretionary denial of § 212(c) relief, we lack jurisdiction to review this determination. *See Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 923 (9th Cir. 2007) ("Discretionary decisions, including whether or not to grant § 212(c) relief, are not reviewable. 8 U.S.C § 1252(a)(2)(B)(ii)."). Moreover, this petition for review is not timely as to the BIA's order dismissing Acosta-Ponce's appeal. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.