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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NARINDER SINGH, Petitioner, v. ERIC H. HOLDER, Jr., Attorney General, Respondent.	No. 06-74708 Agency No. A076-715-493 MEMORANDUM*

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

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Narinder Singh, a native and citizen of India, 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 for abuse of discretion the

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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).

JTK/Research

denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Singh's second motion to reopen as number-barred and untimely because it was filed over three years after the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and Singh failed to establish grounds for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"). Moreover, Singh is barred from adjustment of status because he failed to depart pursuant to a grant of voluntary departure. *See* 8 U.S.C. § 1229c(d)(1)(B) (alien who fails to abide by grant of voluntary departure shall be ineligible for adjustment of status for 10 years); *de Martinez v. Ashcroft*, 374 F.3d 759, 763-64 (9th Cir. 2004).

The BIA also did not abuse its discretion in denying Singh's motion to reopen based on changed country conditions in India because Singh did not provide any new country conditions evidence. *See* 8 C.F.R. § 1003.2(c)(3)(ii).

We lack jurisdiction to review the BIA's decision declining to exercise its *sua sponte* authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Singh's remaining contentions are not persuasive.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.