

AUG 13 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARCO ANTONIO LOPEZ CHAVEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-70556

Agency No. A096-067-428

MEMORANDUM*

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

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH and IKUTA, Circuit Judges.

Marco Antonio Lopez Chavez, a native and citizen of Mexico, petitions pro
se for review of the Board of Immigration Appeals’ (“BIA”) order affirming an
immigration judge’s (“IJ”) decision denying as abandoned his application for

* 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).

cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law, *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). We deny in part and dismiss in part the petition for review.

The agency properly determined that Lopez Chavez's application for cancellation of removal was abandoned, where the IJ instructed Lopez Chavez to submit fingerprints and his criminal history record and informed him of the consequences of his failure to do so, yet nearly two years later Lopez Chavez did not establish diligence in complying with this requirement. *See* 8 C.F.R. § 1003.31(c) (permitting IJ to set filing deadlines and to deem applications abandoned when deadlines not met); *cf. Cui v. Mukasey*, 538 F.3d 1289, 1293-95 (9th Cir. 2008).

The BIA did not err by failing to consider the new evidence Lopez Chavez submitted on appeal. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (2006) (prohibiting the BIA from conducting fact-finding on appeal).

We lack jurisdiction to consider Lopez Chavez's contention that the IJ erred by failing to grant a continuance, because he did not exhaust that issue before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.