

SEP 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DIONISIO LEBRILLA BARRIENTOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-71812

Agency No. A75-578-763

MEMORANDUM\*

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

Submitted September 14, 2009\*\*

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Dionisio Lebrilla Barrientos, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") decision denying his application for

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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).

asylum and withholding of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for substantial evidence, *Lim v. INS*, 224 F.3d 929, 933 (9th Cir. 2000), and reviewing de novo the due process contentions, *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001), we deny in part and dismiss in part the petition for review.

We lack jurisdiction to consider Barrientos's contention that changed circumstances excused the untimeliness of his asylum application, as he did not raise that challenge to the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). We therefore dismiss the petition as to the asylum claim.

The IJ's determination that Barrientos failed to establish a clear probability of future persecution is supported by substantial evidence because Barrientos failed to establish a nexus to a protected ground. *See Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997). We therefore deny the petition as to withholding of removal.

Barrientos's contention that the IJ violated due process by displaying bias is not supported by the record. The proceedings were not "so fundamentally unfair that he was prevented from reasonably presenting his case." *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (citation omitted).

We lack jurisdiction to review Barrientos's contention that he suffered ineffective assistance of counsel before the IJ because he failed to exhaust his

administrative remedies. *See Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1124 (9th Cir. 2000) (requiring exhaustion of claims of ineffective assistance of counsel).

His remaining due process contentions are also unexhausted. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Barrientos' motion to take judicial notice is granted.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**