

SEP 30 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CAIN HERNANDEZ SERRANO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-71738

Agency No. A097-354-771

MEMORANDUM\*

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

Submitted September 13, 2010\*\*

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Cain Hernandez Serrano, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen.

We have jurisdiction under 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denial of a motion to reopen. *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002).

We deny the petition for review.

The BIA acted within its broad discretion in determining that the evidence presented with the motion to reopen was insufficient to warrant reopening. *See id.* (BIA's denial of a motion to reopen shall be reversed only if it is "arbitrary, irrational, or contrary to law"). Hernandez Serrano's contention that the BIA did not review all the evidence fails because he has not overcome the presumption that the BIA reviewed the record. *See Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006). It follows that his due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a petitioner to prevail on a due process claim).

**PETITION FOR REVIEW DENIED.**