

SEP 30 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE JUAN SEDENO-ARROYO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-71820

Agency No. A096-362-494

MEMORANDUM*

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

Submitted September 13, 2008**

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

Jose Juan Sedeno-Arroyo, 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 for abuse of

* 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).

discretion the denial of a motion to reopen. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Sedeno-Arroyo's motion to reopen on the grounds that Sedeno-Arroyo failed to demonstrate that the evidence he submitted with his motion "was not available and could not have been discovered or presented" at his hearing. *See* 8 C.F.R. § 1003.2(c)(1); *see also* *Goel v. Gonzales*, 490 F.3d 735, 738 (9th Cir.2007) (per curiam) (evidence capable of being discovered prior to the hearing cannot serve as the basis for a motion to reopen).

We lack jurisdiction to consider Sedeno-Arroyo's contentions regarding errors in the BIA's January 23, 2008, order because he failed to raise these contentions before the BIA. *See* *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (generally requiring exhaustion of claims before the BIA).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.