

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

ROBERTO BUENROSTRO-BRAMBILA,

No. 14-73418

Petitioner,

Agency No. A074-222-227

v.

MEMORANDUM*

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

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

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Roberto Buenrostro-Brambila, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") decision denying his motion to reopen deportation proceedings. Our jurisdiction is governed by 8 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review de novo legal and constitutional claims, and we review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not err, abuse its discretion, or violate due process in denying Buenrostro-Brambila's motion to reopen as untimely and number-barred, where it found that Buenrostro-Brambila had not provided an adequate basis to excuse the filing requirements. *See Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (the agency must consider the issues raised and express its decision "in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted" (citation and internal quotation marks omitted)); *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (to prevail on a due process challenge, an alien must show error and prejudice). The record does not support Buenrostro-Brambila's contention that the BIA ignored evidence or arguments. *See Najmabadi*, 597 F.3d at 990.

The court's jurisdiction to review the BIA's sua sponte determination is limited to reviewing the reasoning behind the decision for legal or constitutional error, and Buenrostro-Brambila has not established any error. *See Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.