

NOT FOR PUBLICATION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

CESAR D. PINEDA LINARES,

No. 16-71459

Petitioner,

Agency No. A088-966-995

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.

Cesar D. Pineda Linares, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse

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\* 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).

of discretion the denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Pineda Linares's motion to reopen to apply for asylum and related relief, and special rule cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act, where he did not include with the motion any applications or supporting documentation for the relief sought. *See* 8 C.F.R. § 1003.23(b)(3).

The agency did not abuse its discretion in denying Pineda Linares's motion to reopen to apply for adjustment of status as untimely, where he filed the motion more than six years after the applicable deadline, and did not show the motion was subject to any exceptions to the filing deadline. *See* 8 C.F.R. § 1003.23(b)(1), (4).

We lack jurisdiction to consider Pineda Linares's unexhausted contentions regarding his registration under the *ABC* settlement agreement or his eligibility for an I-601A waiver. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010).

We do not consider the extra-record evidence that Pineda Linares submitted for the first time with his opening brief. *See Dent v. Holder*, 627 F.3d 365, 371 (9th Cir. 2010) (stating standard for review of out-of-record evidence).

To the extent Pineda Linares asks this court to exercise sua sponte authority

to reopen proceedings, that authority rests with the BIA. *See* 8 C.F.R. § 1003.2(a).

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