

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-60369
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 27, 2016

Lyle W. Cayce
Clerk

NEMORIO MENDIOLA-IBARRA,

Petitioner

v.

LORETTA LYNCH, U.S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A093 074 034

Before KING, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Nemorio Mendiola-Ibarra (Mendiola) petitions this court for review of the decision of the Board of Immigration Appeals (BIA) denying his motion to reopen or reconsider its earlier dismissal of his appeal as untimely. The Respondent has filed a motion for summary disposition of the appeal. We review the denial of a motion to reconsider and a motion to reopen for abuse of discretion. *Zhao v. Gonzales*, 404 F.3d 295, 303 (5th Cir. 2005).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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The BIA determined that whether construed as a motion to reopen or a motion to reconsider, Mendiola's motion was untimely. *See* 8 C.F.R. § 1003.2(b)(2), (c)(2). It also determined that Mendiola was required to file his motion to reopen with the IJ rather than the BIA. *See Matter of Lopez*, 22 I & N Dec. 16, 17 (BIA 1998).

Mendiola makes no argument challenging any of these determinations by the BIA. Accordingly, any such challenge is deemed abandoned. *See Soadjede v. Ashcroft*, 324 F.3d 830, 833 (5th Cir. 2003). Mendiola's assertion that he may qualify for cancellation of removal is raised for the first time in this appeal. Accordingly, it is not properly before this court. *See Omari v. Holder*, 562 F.3d 314, 321 (5th Cir. 2009).

Mendiola's petition for review is DENIED. The Respondent's motion for summary disposition of the petition for review in lieu of filing a brief is GRANTED.