

APR 30 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR ALEXANDER CHACON, AKA
Oscar Chacon Ardon,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 09-72815

Agency No. A094-213-022

MEMORANDUM*

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

Submitted April 22, 2015**

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

Oscar Alexander Chacon, 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 ("IJ") denial of his motion to reconsider and reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review

* 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).

for abuse of discretion the denial of a motion to reconsider, *Mohammed v. Gonzales*, 400 F.3d 785, 791(9th Cir. 2005), and we deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Chacon's motion to reconsider, where he failed to show any error of law or fact in the IJ's original removal order, and has not established that his decision to waive appeal of that order was not knowing and intelligent, where he was represented by counsel, is bound by his counsel's tactical decisions, and did not raise a claim of ineffective assistance of counsel before the agency. *See Magallanes-Damian v. INS*, 783 F.2d 931, 934 (9th Cir. 1986), *cf. Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) (finding an invalid appeal waiver where a pro se petitioner did not understand the meaning of an appeal). In addition, the agency did not abuse its discretion in construing Chacon's motion as a motion to reconsider. *See* 8 C.F.R. § 1003.23(b)(2); *Iturribarria v. INS*, 321 F.3d 889, 896 (9th Cir. 2003) (a motion to reopen is usually based upon new evidence or a change in factual circumstance, whereas a motion to reconsider is a request that the agency reexamine its decision in light of additional legal arguments, a change of law, or an argument or aspect of the case which was overlooked).

We lack jurisdiction to consider Chacon's newly-raised claim of ineffective assistance of counsel because it is unexhausted. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (the court lacks jurisdiction to consider legal claims not presented in an alien's administrative proceedings).

In light of this disposition, we do not reach Chacon's remaining contentions concerning his eligibility for relief from removal.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.