

MAR 29 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BALTAZAR GONZALEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70780

Agency No. A073-945-580

MEMORANDUM*

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

Submitted March 8, 2010 **

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Baltazar Gonzalez, a native and citizen of Mexico, petitions for review of the decision of the Board of Immigration Appeals affirming the immigration judge's denial of petitioner's motion to reconsider the underlying decision which granted Gonzalez's application for voluntary departure.

* 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).

Gonzalez alleges that the BIA erred in denying his motion to reconsider because his attorney did not become aware of preexisting case law- which would have made petitioner eligible for cancellation of removal relief - until after the initial IJ decision.

Gonzalez did not seek cancellation relief at his hearing before the IJ, and the IJ granted petitioner voluntary departure which was the only form of relief requested by Gonzalez. Because Gonzalez's motion lacked any allegations of error in the initial decision, Gonzalez's motion to reconsider did not raise proper grounds for reconsideration. *See* 8 C.F.R. § 1003.23. The BIA did not abuse its discretion when it denied Gonzalez's motion to reconsider because the motion was solely based on a new legal argument, and a new form of relief, that could have been raised in the initial IJ hearing. *See Doissant v. Mukasey*, 538 F.3d 1167, 1170-71 (9th Cir. 2008); *Mohammed v. Gonzales*, 400 F.3d 785, 792 n.8 (9th Cir. 2005) ("a motion to reconsider does not present new law or facts, but rather challenges determinations of law and fact made by the BIA").

PETITION FOR REVIEW DENIED.