

AUG 15 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DINESH PRASAD,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-70311

Agency No. A078-186-128

MEMORANDUM*

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

Submitted August 8, 2012**

Before: ALARCÓN, BERZON, and IKUTA, Circuit Judges.

Dinesh Prasad, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his motion for a continuance. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a

* 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).

motion for a continuance, *Karapetyan v. Mukasey*, 543 F.3d 1118, 1121 (9th Cir. 2008), *superseded by statute on other grounds as stated in Owino v. Holder*, 575 F.3d 956, 958 (9th Cir. 2009) (per curiam), and review de novo questions of law, *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny in part and dismiss in part the petition for review.

The IJ did not abuse her discretion in denying Prasad's motion for a third continuance for failure to show good cause where the Form I-130 Petition for Alien Relative on Prasad's behalf had been denied and an appeal was pending at the time of his hearing. *See* 8 C.F.R. § 1003.29 (IJ has authority to grant a continuance upon a showing of good cause); *Karapetyan*, 543 F.3d at 1129. It follows that Prasad's due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

We lack jurisdiction to review Prasad's claim that the IJ's failure to grant him a continuance denied him an opportunity to present evidence of changed country conditions because this claim was not raised before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (this court lacks jurisdiction to review contentions not raised before the agency).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.