

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 15 2019

FOR THE NINTH CIRCUIT

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

LUIS ALFREDO MATA-FASARDO,

No. 18-71079

Petitioner,

Agency No. A070-647-155

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Luis Alfredo Mata-Fasardo, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his fourth motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and we review de novo questions of law. *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir.

* 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).

2008). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Mata-Fasardo's untimely and number-barred motion to reopen where Mata-Fasardo failed to establish materially changed country conditions or prima facie eligibility for relief to qualify for the regulatory exception to the filing deadline. *See* 8 C.F.R. § 1003.2(c)(2)-(3); *see also Toufighi*, 538 F.3d at 996-97 (concluding that the Board may deny a motion to reopen for failing to meet any of the four burdens, including prima facie eligibility, evidence of changed conditions, and that the evidence is "material").

We lack jurisdiction to review the agency's discretionary decision not to reopen proceedings sua sponte, and Mata-Fasardo fails to raise a colorable constitutional claim or question of law that would invoke our jurisdiction. *See Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016) ("[T]his court has jurisdiction to review Board decisions denying sua sponte reopening for the limited purpose of reviewing the reasoning behind the decisions for legal or constitutional error.").

PETITION FOR REVIEW DENIED in part; DISMISSED in part.