

FEB 21 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LIANG YUAN ZHU,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-71836

Agency No. A72-142-050

MEMORANDUM*

LIANG YUAN ZHU,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-73024

Agency No. A72-142-050

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

Argued and Submitted February 13, 2008

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

San Francisco, California

Before: SILVERMAN, McKEOWN, and TALLMAN, Circuit Judges.

Liang Yuan Zhu seeks review of the Board of Immigration Appeals' ("BIA") separate denials of his motions to reopen and reconsider his immigration proceedings. Zhu's former counsel did not perform ineffectively as she reasonably believed that the filing of a petition for review would automatically stay an order of voluntary departure. *See Desta v. Ashcroft*, 365 F.3d 741, 748–49 (9th Cir. 2004). Zhu knew that he had thirty days to voluntarily depart but simply never left.

The BIA did not abuse its discretion when it concluded that Zhu did not qualify for the "voluntariness exception" to section 240B of the Immigration and Nationality Act, 8 U.S.C. § 1229c. *See Matter of Zmijewska*, 24 I & N. Dec. 87 (BIA 2007). Zhu concedes that he received notice of the BIA's order granting him thirty days to voluntarily depart, and therefore, he cannot legitimately claim that he involuntarily failed to depart.

PETITIONS DENIED.