

FEB 15 2008

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

NOT FOR PUBLICATION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

ADAN ISAI TOBAR-SERRANO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-70975

Agency No. A39-194-577

MEMORANDUM*

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

Submitted February 11, 2008**

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals’ (“BIA”) order denying as untimely petitioner’s motion to reopen deportation proceedings.

The regulations provide that a motion to reopen must be filed within 90 days of the final administrative order. *See* 8 C.F.R. § 1003.2(c)(2). The BIA did not

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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abuse its discretion in denying petitioner's motion to reopen because the motion to reopen was filed more than nine months after the final administrative order and did not meet a regulatory exception to the 90-day filing requirement. *See* 8 C.F.R. § 1003.2(c)(3); *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1222 (9th Cir. 2002) (BIA's denial of a motion to reopen is reviewed for abuse of discretion). Accordingly, we deny this petition for review in part.

Further, this court lacks jurisdiction to review the BIA's decision declining to exercise its sua sponte authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). Accordingly, respondent's motion to dismiss this petition for review in part is granted.

The motion to consolidate is denied as moot. The temporary stay of deportation confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.