

AUG 19 2008

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

NOT FOR PUBLICATION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

CIARRA MARIA JIMENEZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70949

Agency No. A96-364-600

MEMORANDUM*

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

Submitted August 11, 2008**

Before: CANBY, LEAVY and KLEINFELD, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order denying petitioner's motion to reopen.

* 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).

Respondent's opposed motion to dismiss is construed as a motion to dismiss, in part, and for summary disposition, in part. So construed, the motion is granted.

We review the BIA's denial of a motion to reopen for abuse of discretion. *See Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008). The BIA did not abuse its discretion in denying petitioner's motion to reopen because the motion to reopen was untimely and did not meet any of the regulatory exceptions. *See* 8 C.F.R. § 1003.2(c)(2), (3). Accordingly, the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Moreover, this court lacks jurisdiction to review the BIA's discretionary decision to decline to exercise its *sua sponte* authority to reopen petitioner's case. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

All other pending motions are denied as moot. The temporary stay of removal 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.