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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUFINA MORALES MENDEZ, a.k.a.
RUFINA RUIZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70420

Agency No. A78-003-532

MEMORANDUM *

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

Submitted June 9, 2008**

Before: REINHARDT, BERZON and M. SMITH, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals'

* 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).

(“BIA”) denial of a motion to reopen.

We review the denial of a motion to reopen for abuse of discretion. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008).

The regulations provide that “a party may file only one motion to reopen,” and that the motion “must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.” *See* 8 C.F.R. § 1003.2(c)(2). Because petitioner’s motion to reopen was filed beyond the 90-day deadline, and petitioner has not contended that any exceptions to this time limit apply, the BIA did not abuse its discretion in denying petitioner’s untimely motion to reopen. Respondent’s motion to dismiss is construed as a motion to dismiss in part and a motion for summary disposition in part. Respondent’s motion for summary disposition in part is granted because 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).

This court lacks jurisdiction to review the BIA’s refusal to reopen *sua sponte*. *See Ekimian v. INS*, 303 F.3d 1153 (9th Cir. 2002). Accordingly,

respondent's motion to dismiss this petition for review in part for lack of jurisdiction is granted. *See id.*

All other pending motions are denied as moot. The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.