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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SYLVESTER ROBERT ALLEN,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 07-74125

Agency No. A72-886-126

MEMORANDUM*

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

Submitted May 12, 2008**

Before: KOZINSKI, Chief Judge, THOMAS and CALLAHAN, Circuit Judges.

Sylvester Robert Allen, a native and citizen of the United Kingdom,
petitions for review of the Board of Immigration Appeals' ("BIA") order denying

* 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).

his motion to reopen removal proceedings.

We have reviewed the response to this court's order to show cause, and we conclude that 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). Accordingly, the petition for review is summarily denied.

The BIA did not abuse its discretion in denying the motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). Petitioner's motion to reopen was based on new evidence consisting of his state court motion that seeks to vacate the judgment of conviction and to withdraw his guilty plea. The pendency of a post-conviction motion cannot negate the finality of a conviction. *Grageda v. INS*, 12 F.3d 919, 921 (9th Cir. 1993). Moreover, petitioner is prohibited from collaterally attacking the propriety of his state court conviction in immigration proceedings. *See Urbina-Mauricio v. INS*, 989 F.2d 1085, 1089 (9th Cir. 1993).

The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.