

JAN 10 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENITO PEREZ LOPEZ; MARIA
REMEDIOS RODRIGUEZ;

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-73618

Agency Nos. A79-535-327
A79-535-673

MEMORANDUM*

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

Submitted January 7, 2008**

Before: O'SCANNLAIN, SILVERMAN and GRABER, Circuit Judges.

The motion to proceed in forma pauperis is granted.

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

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

07-73618

Benito Perez Lopez and Maria Remedios Rodriguez petition for review of a Board of Immigration Appeals' ("BIA") decision denying their motion to reopen as untimely and number-barred.

The Board of Immigration Appeals ("BIA") did not abuse its discretion in denying petitioners' motion to reopen because it was Benito Perez Lopez's second motion to reopen, and was untimely as to Maria Remedios Rodriguez. *See* 8 C.F.R. § 1003.2(c)(2), (3); *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1222 (9th Cir. 2002).

Accordingly, respondent's unopposed motion for summary disposition is granted in part 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).

To the extent petitioners challenge the BIA's decision not to exercise its discretionary authority to reopen sua sponte, this court lacks jurisdiction to consider that claim. *See Ekimian v. INS*, 303 F.3d 1153, 1158-59 (9th Cir. 2002). Accordingly, the petition for review is dismissed in part.

07-73618

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 and DISMISSED in part.