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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EPIFANIO MENDOZA CASTANEDA; et al., Petitioners, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 07-72335 Agency Nos. A96-351-387 A96-351-388 A96-351-389 MEMORANDUM*

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

Submitted November 13, 2007 **

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

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

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* 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).

The BIA's denial of a motion to reopen is review for abuse of discretion. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). The BIA did not abuse its discretion in denying the motion to reopen with respect to petitioner, Silvia Mendoza, A# 96-351-388, because petitioner failed to maintain the requisite ten years of continuous physical presence as defined in 8 U.S.C. § 1229b(d)(2) because she departed from the United States for a period in excess of 90 days and is statutorily ineligible for cancellation of removal relief.

Further, the BIA did not abuse its discretion in denying the motion to reopen with respect to petitioner Maria Larisa Mendoza-Alvarez, A# 96-351-389, because petitioner does not have a qualifying relative as defined in 8 U.S.C. § 1229b(b)(1)(D) and is also statutorily ineligible for cancellation of removal relief. *See Molina-Estrada v. INS*, 293 F.3d 1089, 1093-94 (9th Cir. 2002).

Respondent's motion for summary disposition is granted with respect to petitioners, Silvia Mendoza and Maria Larisa Mendoza-Alvarez, 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). Accordingly, the petition for review is denied with respect to Silvia Mendoza and Maria Larisa Mendoza-Alvarez.

Respondent's motion to dismiss this petition for review with respect to petitioner, Epifanio Mendoza-Castaneda, A# 96-351-387, for lack of jurisdiction is granted. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Fernandez v. Gonzales*, 439 F.3d 592, 601 (9th Cir. 2006) (concluding that the court lacks jurisdiction to review the Board of Immigration Appeals' denial of motion to reopen for failure to establish a prima facie case if a prior adverse discretionary decision was made by the agency).

The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

All other pending motions are denied as moot.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.