

MAR 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE GUTIERREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>

Nos. 05-72423
05-73902

Agency No. A75-306-433

MEMORANDUM*

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

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

In these consolidated petitions for review, Jose Gutierrez, a native and citizen of Mexico, petitions 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).

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(“BIA”) order denying his motion to reopen removal proceedings (No. 05-72423) and its order denying his motion to reconsider (No. 05-73902). Our jurisdiction is governed by 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), we deny in part and dismiss in part petition No. 05-72423 and deny petition No. 05-73902.

The BIA did not abuse its discretion in denying Gutierrez’s motion to reopen as untimely because it was filed almost a year and half after the BIA’s final order of removal. *See* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must be filed within 90 days of final administrative decision).

We lack jurisdiction to review Gutierrez’s challenge to the immigration judge’s underlying order denying his application for cancellation of removal because these petitions for review are not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

The BIA did not abuse its discretion in denying Gutierrez’s motion to reconsider because he failed to identify an error of fact or law in the BIA’s prior order. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc).

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We need not address Gutierrez's additional arguments raised for the first time in his reply brief. *See Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1021 n.4 (9th Cir. 2005) (issues not raised in the opening brief are deemed waived).

**No. 05-72423: PETITION FOR REVIEW DENIED in part;
DISMISSED in part.**

No. 05-73902: PETITION FOR REVIEW DENIED.