

FEB 15 2008

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

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FERNANDO GARCIA SOTO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 07-73533

Agency No. A95-313-816

MEMORANDUM\*

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

Submitted February 11, 2008\*\*

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")  
order denying petitioner's 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).

07-73533

We review the BIA's denial of a motion to reopen for abuse of discretion. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). The regulations state that a motion to reopen removal proceedings must be filed no later than ninety 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). A review of the administrative record demonstrates that the BIA did not abuse its discretion in denying petitioner's motion to reopen as untimely. Petitioner's final administrative order of removal was entered on September 29, 2006. Petitioner's motion to reopen was filed on June 8, 2007, more than ninety days after the date on which the final order of removal was entered. *See* 8 C.F.R. § 1003.2(c)(2).

To the extent petitioner asserts the BIA's denial of the motion to reopen for protection under the Convention Against Torture should be considered an exception to the time limits that pertain to motions to reopen, the BIA did not abuse its discretion. Petitioner has not met his burden of presenting a prima facie case for reopening because the motion to reopen does not present any changes that have occurred in Mexico that are material to him or his circumstances. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *Kamalthas v. INS*, 251 F.3d 1279 (9th Cir. 2001).

07-73533

Accordingly, respondent's unopposed 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).

The motion for stay of voluntary departure, filed after the departure period had expired, is denied. *See Garcia v. Ashcroft*, 368 F.3d 1157 (9th Cir. 2004).

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.**