

MAR 12 2008

MOLLY DWYER, ACTING CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION  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

ANAIDA KOCHARYAN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-72466

Agency No. A78-674-093

MEMORANDUM\*

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

Submitted February 26, 2008\*\*

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Anaida Kocharyan, a native of the former Soviet Union and citizen of  
Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") order

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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).

dismissing her appeal from an immigration judge's decision denying asylum. We dismiss the petition for review.

Kocharyan contends that extraordinary circumstances excuse the late filing of her asylum application because she received ineffective assistance from her application preparer, Ashot Simonyan. *See* 8 U.S.C. § 1158(a)(2)(D); 8 C.F.R. § 1208.4(a)(5)(iii). We lack jurisdiction to review the agency's determination that Kocharyan failed to show extraordinary circumstances because the underlying facts are disputed. *See Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007). The disputed facts include the date when Kocharyan completed her asylum application and sent it to Simonyan, the extent and details of Kocharyan's agreement with Simonyan, and the government's knowledge of Simonyan's history of misconduct and criminal status. Because we lack jurisdiction, we do not consider Kocharyan's contentions regarding compliance with the procedural requirements for bringing a claim of ineffective assistance of counsel.

We lack jurisdiction to consider Kocharyan's due process claim because she failed to exhaust it before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 676-78 (9th Cir. 2004) (procedural claims curable by the agency must be exhausted).

**PETITION FOR REVIEW DISMISSED.**