

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

AUG 05 2008

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

ERICELDA IDOLINA RODAS DIAZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 04-73280

Agency No. A72-009-744

MEMORANDUM\*

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

Argued and Submitted June 11, 2008  
San Francisco, California

Before: SCHROEDER, LEAVY, and WALKER\*\*, Circuit Judges.

Ericelda Idolina Rodas Diaz, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal

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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 Honorable John M. Walker, Jr., Senior United States Circuit Judge for the Second Circuit, sitting by designation.

from an immigration judge's ("IJ") order denying her motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *see Konstantinova v. INS*, 195 F.3d 528, 529 (9th Cir. 1999), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to consider Diaz's contention that the IJ misinformed her concerning asylum application requirements because Diaz did not raise this issue before the BIA and therefore failed to exhaust her administrative remedies. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Because Diaz did not present any new, material evidence, the facts of which were not available to her at the time she decided to withdraw her application for asylum, the agency did not abuse its discretion when it denied her motion to reopen. *See* 8 C.F.R. §§ 1003.2(c)(3)(ii), 1003.23(b)(3); *Chang Hua He v. Gonzales*, 501 F.3d 1128, 1131-33 (9th Cir. 2007).

Because Diaz failed to comply with the requirements as set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and the alleged ineffective assistance of counsel is not clear on the face of the administrative record, the agency also did not abuse its discretion in denying Diaz's motion to reopen based on ineffective assistance of counsel. *See Reyes v. Ashcroft*, 358 F.3d 592, 598-99 (9th Cir. 2004).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**