

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 18 2008

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

INOCENTE MIRANDA LEON; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-71525

Agency Nos. A95-190-344
A95-190-345
A95-190-346
A95-190-347
A95-190-348

MEMORANDUM*

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

Submitted August 11, 2008**

Before: CANBY, LEAVY, and KLEINFELD, Circuit Judges.

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

* 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).

We review the BIA's ruling on a motion to reopen for abuse of discretion. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008).

An alien who is subject to a final order of removal is limited to filing one motion to reopen removal proceedings, and that motion must be filed within 90 days of the date of entry of a final order of removal. 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Because petitioners' motion to reopen was filed beyond the 90-day deadline, and petitioners have not contended that any recognized exceptions to this time limit apply, the BIA did not abuse its discretion in denying petitioners' untimely motion to reopen. *See id.*; *see also Dela Cruz v. Mukasey*, --- F.3d ----, 2008 WL 2669690, at *1 (9th Cir. July 9, 2008) (per curiam) ("The filing of a petition for review in this court does not toll the statutory time limit for filing a motion to reopen before the BIA.").

Accordingly, respondent's 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) (stating standard).

This court lacks jurisdiction to review the BIA's refusal to reopen removal proceedings *sua sponte*. See *Ekimian v. INS*, 303 F.3d 1153, 1159-60 (9th Cir. 2002). Accordingly, respondent's motion to dismiss in part is granted.

All other pending motions are denied as moot. The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.