

SEP 27 2007

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YUBAI GE,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 05-75227

Agency No. A95-451-367

MEMORANDUM*

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

Submitted September 24, 2007***

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Yubai Ge, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider its prior decision denying his motion to reopen based on ineffective assistance of counsel. To the extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. We review the denial of a motion to reconsider for abuse of discretion, and claims of due process violations due to ineffective assistance of counsel *de novo*. See *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We dismiss in part and deny in part the petition for review.

Ge's pro se brief largely addresses the IJ's underlying order denying his application for asylum, withholding of removal, and relief under the Convention Against Torture. We lack jurisdiction to review that determination, because Ge failed to file a timely petition for review of that decision with this court. See *Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

Liberally construing Ge's contentions as challenging the BIA's denial of his motion to reconsider, the BIA acted within its discretion because Ge failed to demonstrate he has plausible grounds for relief, and the presumption of prejudice created by his former attorney's failure to file a brief with the BIA is rebutted. See *Amarjit Singh v. Ashcroft*, 367 F.3d 1182, 1189-90 (9th Cir. 2004) (to demonstrate

plausible grounds for relief, “[petitioner] must show that the BIA could plausibly have determined that he was [eligible for relief] based on the record before it”).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.