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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EMILSA VALENZUELA GUERRA,</p> <p>Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>

No. 07-72392

Agency No. A70-780-670

MEMORANDUM*

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

Submitted November 13, 2007**

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

This is a petition for review from the Board of Immigration Appeals’ (“BIA”) May 16, 2007 order dismissing petitioner’s appeal from the Immigration Judge’s (“IJ”) denial of her motions to reopen removal proceedings, which had been conducted *in absentia*. We review for abuse of discretion the denial of a

* 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).

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motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

Petitioner was ordered removed *in absentia* on August 5, 1998. She did not file her first motion to reopen until June 20, 2006. After the IJ denied that motion, petitioner filed a second motion to reopen on November 13, 2006, which the IJ also denied. Because she was ordered removed *in absentia*, petitioner must establish that her motions to reopen met either the requirements of 8 C.F.R. § 1003.23(b)(1) or the requirements of 8 C.F.R. § 1003.23(b)(4)(ii). *See Matter of M-S-*, 22 I&N Dec. 349 (BIA 1998). The BIA did not abuse its discretion in determining that petitioner had not established either that her failure to appear at her August 5, 1998 removal hearing was caused by exceptional circumstances or that she lacked notice of the hearing. *See* 8 C.F.R. § 1003.23(b)(4)(ii). Nor did the BIA abuse its discretion in determining that petitioner's motion to reopen to apply for new relief, filed nearly 8 years after she was ordered removed *in absentia*, was not timely filed pursuant to 8 C.F.R. § 1003.23(b)(1).

Accordingly, respondent's motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not

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to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

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.