

DEC 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

EGHOSA EUGENE SOLOMON  
AGUELE,

Petitioner,

v.

MICHAEL B. MUKASEY,\*\* Attorney  
General,

Respondent.

No. 04-75127

Agency No. A70-782-150

MEMORANDUM\*

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

Submitted December 3, 2007 \*\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Eghosa Eugene Solomon Aguele, a native of Russia and citizen of Nigeria,

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

\*\* Michael B. Mukasey is substituted for his predecessor, Alberto R. Gonzales, as 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).

petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider the BIA's order dismissing his appeal as untimely. To the extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Ghahremani v. Gonzales*, 498 F.3d 993, 997 (9th Cir. 2007), we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Aguele's motion to reconsider as untimely because it was filed more than five years after the BIA's order dismissing his appeal. *See* 8 C.F.R. § 1003.2.

We lack jurisdiction to review Aguele's contention that the filing deadline should have been equitably tolled due to ineffective assistance of counsel, because he failed to raise the issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (explaining that exhaustion is mandatory and jurisdictional).

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