

DEC 15 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ALBERTO CARDENAS-
RICSE; PATRICIA DEL CARMEN
CARDENAS-LUNA,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-72978

Agency Nos. A072-523-463
A075-663-378

MEMORANDUM *

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

Submitted December 1, 2008 **

Before: GOODWIN, CLIFTON and BEA, Circuit Judges.

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

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

* 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).

The regulations provide that “a party may file only one motion to reopen,” and that the motion “must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.” *See* 8 C.F.R. § 1003.2(c)(2). The BIA did not abuse its discretion in denying petitioners’ motion to reopen as untimely and numerically barred because it was petitioners’ second motion to reopen and was filed on May 5, 2008, more than 90 days after the August 18, 2005 final administrative decision. Accordingly, respondent’s motion for summary disposition is granted in part 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).

We lack jurisdiction to review the BIA’s decision declining to exercise its sua sponte authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). Accordingly, we dismiss this petition for review in part for lack of jurisdiction.

The motion to proceed in forma pauperis is granted. The motion for a stay of removal pending review is denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.