

DEC 31 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA LUISA AVILA-RODRIGUEZ; et
al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-71718

Agency Nos. A097-359-665
A097-359-666

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.

* 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 motion to proceed in forma pauperis is granted.

Respondent's motion to dismiss this petition for review for lack of jurisdiction in part is granted. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Fernandez v. Gonzales*, 439 F.3d 592, 601 (9th Cir. 2006) (concluding that the court lacks jurisdiction to review the Board of Immigration Appeals' denial of motion to reopen for failure to establish a prima facie case if a prior adverse discretionary decision was made by the agency).

The BIA also construed petitioners' motion as a motion to reconsider, and denied the motion as untimely filed. *See* 8 C.F.R. § 1003.2(b)(2). To the extent petitioners challenge the BIA's decision in this regard, we deny the petition for review 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) (stating standard).

We further note that petitioners are barred from discretionary relief because voluntary departure has expired. *Cf. Granados-Osegura v. Mukasey*, — F.3d — (9th Cir. 2008).

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 DISMISSED in part, DENIED in part.