

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 09 2009

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

CARLOS ALBERTO GONZALEZ
GARCIA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-72154

Agency No. A073-989-112

MEMORANDUM*

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

Argued and Submitted December 11, 2008
Pasadena, California

Before: PREGERSON and D.W. NELSON, Circuit Judges, and SINGLETON**,
Senior District Judge.

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

** The Honorable James K. Singleton, United States District Judge for the District of Alaska, sitting by designation.

Carlos Gonzalez Garcia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' denial of his claim of ineffective assistance of counsel pursuant to his application for Cancellation of Removal. Gonzalez Garcia contended before the Board of Immigration Appeals that his former attorney, Timothy Mason, provided him with ineffective assistance of counsel. Mason was disbarred on July 18, 2004.

Before this court, however, Gonzalez Garcia does not argue that Timothy Mason provided him with ineffective assistance of counsel. Instead, Gonzalez Garcia contends for the first time that his former attorney, Karen Sims, provided ineffective assistance of counsel. Sims worked for Mason. Gonzalez Garcia also proffers new evidence to support this claim.

Gonzalez Garcia presents strong evidence that Sims provided ineffective assistance of counsel before the immigration judge. Indeed, Sims was disbarred on July 19, 2007. This court, however, lacks jurisdiction over this appeal pursuant to 8 U.S.C. § 1252(d)(1). We therefore exercise our authority to stay the mandate for 120 days from the filing of this order to allow time for Gonzalez Garcia's pro bono counsel to file a motion to reopen before the Board of Immigration Appeals to present this new ineffective assistance of counsel claim. **PETITION FOR REVIEW DENIED. MANDATE STAYED.**