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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGARITO GARCIA-LOBATO; et al.,	No. 08-72285
Petitioners,	Agency Nos. A079-519-421 A079-519-440 A079-519-442 A079-519-441 A079-519-443
v.	
MICHAEL B. MUKASEY, Attorney General,	
Respondent.	MEMORANDUM [*]

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

January 20, 2009 [**]

Before: O'SCANNLAIN, SILVERMAN and BYBEE, Circuit Judges.

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

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[*] 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).

HS/MOATT

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

A review of the administrative record demonstrates that petitioners' motion to reopen did not challenge the BIA's prior decision that petitioners Edelmira Lazaro-Pastor, Judith Garcia-Lazaro, Liliana Garcia-Lazaro and Emmaneul Garcia-Lazaro failed to establish continuous physical presence in the United States for a period of not less than ten years as required for cancellation of removal. Therefore the BIA did not abuse its discretion in denying the motion as to Edelmira Lazaro-Pastor, Judith Garcia-Lazaro, Liliana Garcia-Lazaro and Emmaneul Garcia-Lazaro. *See* 8 U.S.C. § 1229b(b)(1)(A); *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850-51 (9th Cir. 2004). Accordingly, we summarily deny the petition as to Edelmira Lazaro-Pastor, Judith Garcia-Lazaro, Liliana Garcia-Lazaro and Emmaneul Garcia-Lazaro because the questions raised in this petition 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).

In addition, respondent's motion to dismiss this petition for review for lack of jurisdiction is granted as to petitioner Margarito Garcia-Lobato. *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).

To the extent petitioners challenge the BIA's decision declining to exercise its sua sponte authority to reopen, we lack jurisdiction to review that portion of the BIA's order. *See Ekimian v. INS*, 303 F.3d 1153 (9th Cir. 2002).

All other pending motions are 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.