FILED

FEB 13 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE MUNOZ GODINEZ, et al., Petitioners, v. ERIC H. HOLDER, JR., Attorney General, Respondent.	No. 05-73635 Agency No. A075-758-732 A075-758-733 MEMORANDUM*

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

Submitted February 11, 2009**
Pasadena, California

Before: FARRIS and WARDLAW, Circuit Judges, and SCHWARZER,***
District Judge.

---

*This disposition is inappropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

***The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

Jose Munoz Godinez and Antonia Munoz,[1] natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") denial of their motion to reconsider a prior BIA decision denying as untimely their appeal of an immigration judge's ("IJ") decision. We have jurisdiction in part under 8 U.S.C. § 1252(a)(1). We dismiss the petition in part for lack of jurisdiction, and deny in part.

We review the denial of a motion to reconsider for abuse of discretion. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). A motion to reconsider seeks a new determination based on alleged errors of fact or law by the BIA. *See* 8 U.S.C. § 1229a(c)(6) (removal proceedings); 8 C.F.R. § 1003.2(b)(1). The BIA did not abuse its discretion in denying Godinez's motion to reconsider because he did not raise any errors of fact or law.

To the extent that Godinez appeals the BIA decision denying his appeal of the IJ's decision as untimely, we lack jurisdiction to review that decision because Godinez did not file a petition for review of this decision. *See Stone v. INS*, 514 U.S. 386, 405 (1995); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1258 (9th Cir. 1996); 8 U.S.C. § 1252(b)(1). The filing of a motion to reconsider does not toll the statutory time in which to appeal the underlying final order. *See Stone*, 514 U.S. at

[1] We refer to Godinez, the primary applicant, in this disposition.

405; *Martinez-Serrano*, 94 F.3d at 1258.

DENIED in part; DISMISSED in part.