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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFAEL AHUMADA GUARDADO;
et al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-73758

Agency Nos. A075-484-933
A075-484-934

MEMORANDUM *

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

Submitted February 23, 2009 **

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order denying petitioners' untimely 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).

08-73758

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). An alien who is subject to a final order of removal is limited to filing one motion to reopen removal proceedings within 90 days after the date of entry of a final order of removal. 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Because petitioners' motion to reopen was filed beyond the 90-day deadline, and petitioners have not contended an exception applies to this time limit, the BIA did not abuse its discretion in denying petitioners' untimely motion to reopen. *See id.* Accordingly, respondent's motion for summary disposition is granted 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).

To the extent petitioners claim the agency erred by denying *sua sponte* reopening, this court lacks jurisdiction to review the BIA's decision not to reopen proceedings *sua sponte*. *See Ekimian v. INS*, 303 F.3d 1153 (9th Cir. 2002).

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 DENIED.