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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NOE LOBATO BARRAGAN,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-74584

Agency No. A096-342-774

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 petitioner’s motion to reopen removal proceedings.

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).

* 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).

An alien who is subject to a final order of removal is limited to filing one motion to reopen removal proceedings, and that motion must be filed within 90 days of 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). Petitioner's final order of removal was entered on October 29, 2007. Because petitioner's motion to reopen was filed on May 14, 2008, beyond the 90-day deadline, and petitioner has not contended that any exceptions to this time limit apply, the BIA did not abuse its discretion in denying petitioner's untimely motion to reopen. *See id.*; *see also Dela Cruz v. Mukasey*, 532 F.3d 946, 949 (9th Cir. 2008) (holding that "the pendency of a petition for review of an order of removal does not toll the statutory time limit for the filing of a motion to reopen with the BIA").

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).

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.