NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 26 2009

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

ANAID OGANESIAN, Petitioner, v. ERIC H. HOLDER, Jr., Attorney General, Respondent.	No. 05-74521 Agency No. A72-776-708 MEMORANDUM[*]

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

Submitted March 18, 2009[**]

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Anaid Oganesian, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") order denying Oganesian's motion to reopen proceedings to apply for protection under the Convention Against Torture

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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).

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("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review denials of motions to reopen for abuse of discretion. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny the petition for review.

The BIA correctly treated Oganesian's motion as a motion to reopen rather than a motion to reconsider because she sought to apply for new relief, and did not identify an error of fact or law by the agency. *See Iturribarria v. INS*, 321 F.3d 889, 895-96 (9th Cir. 2003).

The BIA did not abuse its discretion in denying Oganesian's motion to reopen for failure to establish prima facie eligibility for CAT protection. *See Azanor v. Ashcroft*, 364 F.3d 1013, 1018 (9th Cir. 2004) ("To qualify for reopening under the Torture Convention, an alien must establish a prima facie case that 'it is more likely than not that . . . she would be tortured if removed to the proposed country of removal.'") (citing 8 C.F.R. § 208.16(c)(2)). In Oganesian's one-page motion, counsel presented no arguments, identified no documents or testimony in the record, and submitted no additional evidence regarding any threat of torture if Oganesian returns to Armenia.

The record reveals that former counsel's representation was unsatisfactory in several respects, including in Oganesian's briefing before this court. We therefore stay issuance of the mandate for 120 days to provide Oganesian an opportunity to

file a motion to reopen with the BIA on grounds of ineffective assistance of counsel. *See Roque-Carranza v. INS*, 778 F.2d 1373, 1374 (9th Cir. 1985) (staying mandate to permit petitioner to file a motion to reopen before the BIA to present an ineffective assistance of counsel claim).

PETITION FOR REVIEW DENIED; ISSUANCE OF MANDATE STAYED FOR 120 DAYS.