

APR 27 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VALERIANO V. DEOCARIZA;
FLORABEL STUART DEL ROSARIO
DEOCARIZA; DARLENE MARIE
DEOCARIZA-DEL ROSARIO,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-75590

Agency Nos. A070-084-735
A070-081-311
A070-081-312

MEMORANDUM *

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

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

* 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).

Valeriano V. Deocariza, and his wife and daughter, natives and citizens of the Philippines, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reconsider. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), and we deny in part and dismiss in part the petition for review.

Because the Department of Homeland Security had the sole authority to reinstate the Deocarizas' voluntary departure period, the BIA did not abuse its discretion in denying their motion to reconsider. *See* 8 C.F.R. § 1240.57. We lack jurisdiction to consider the Deocarizas' contention that the BIA should have treated their motion to reopen as a motion to reissue its August 16, 2000, decision because they did not exhaust this claim before the BIA. *See Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1124 (9th Cir. 2000).

The Deocarizas do not challenge the BIA's determination that their motion to reconsider failed to identify any error of law or fact in the BIA's March 21, 2005, order denying their motion to reopen. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in the opening brief are waived).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.

