

OCT 27 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VARDUHI HOVAKIMYAN; GARABET  
OSAPIAN, a.k.a., KARAPET  
HOVSEPYAN; et. al.,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-75449

Agency Nos. A075-763-493

A075-763-494

A075-763-495

A075-763-496

MEMORANDUM \*

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

Submitted October 13, 2009\*\*

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Varduhi Hovakimyan, her husband, Garabet Osapian, and their children,  
natives and citizens of Armenia, petition for review of the Board of Immigration

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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).

Appeals’ (“BIA”) order denying their motion to reopen based on ineffective assistance of counsel and changed country conditions. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo ineffective assistance of counsel claims. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We grant in part, deny in part, and dismiss in part the petition for review, and remand.

The BIA erred when it failed fully to address Hovakimyan’s ineffective assistance of counsel claim based on prior counsel’s failure to raise on appeal the immigration judge’s finding that Hovakimyan had filed a frivolous asylum application. *See Singh v. Gonzales*, 416 F.3d 1006, 1015 (9th Cir. 2005) (remanding for failure to address petitioner’s equitable tolling argument); *Sagaydak v. Gonzales*, 405 F.3d 1035, 1040 (9th Cir. 2005) (BIA is “not free to ignore arguments raised by a petitioner”). We remand for the BIA to reconsider Hovakimyan’s ineffective assistance of counsel claim and to consider whether prior counsel’s performance warrants equitable tolling of the 90-day deadline on Hovakimyan’s motion to reopen. *See Iturribarria*, 321 F.3d at 899 (motions deadline tolled until petitioner meets with new counsel and reviews file); *see also INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

The BIA did not abuse its discretion in determining that Hovakimyan failed to provide sufficient evidence of changed circumstances in Armenia. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *see also Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) (“The critical question is ... whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution.”).

We lack jurisdiction to review the BIA’s refusal to exercise its sua sponte power to grant motions to reopen. *See Minasyan v. Holder*, 553 F.3d 1224, 1229 (9th Cir. 2009).

The parties shall bear their own costs for this petition for review.

**PETITION FOR REVIEW GRANTED in part; DENIED in part;  
DISMISSED in part; REMANDED.**