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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HENRY ROBERT LISBEY,</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. 06-74373

Agency No. A024-902-889

MEMORANDUM*

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

Submitted January 20, 2009**

Before: O’SCANNLAIN, SILVERMAN and BYBEE, 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 denial of a motion to reopen for abuse of discretion. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003).

* 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)*.

The regulations provide that “a party may file only one motion to reopen,” and that the motion “must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.” *See* 8 C.F.R. § 1003.2(c)(2). The BIA did not abuse its discretion in denying petitioner’s motion to reopen as untimely because it was filed more than 28 months after the BIA’s final administrative decision and petitioner failed to establish grounds for equitable tolling. *See Iturribarria*, 321 F.3d at 897 (equitable tolling is available “when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence”). 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).

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.