

JAN 28 2009

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ZHIXIN XIA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-73024

Agency No. A095-313-141

MEMORANDUM*

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

Submitted January 20, 2009**
San Francisco, California

Before: O'SCANNLAIN, SILVERMAN and BYBEE, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")

* 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).

order denying petitioner's motion to reopen removal proceedings and motion to reconsider.

We review the BIA's ruling on a motion to reopen and a motion to reconsider for abuse of discretion. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008).

The statute and regulations provide, with certain exceptions that do not apply to this case, that the motion to reopen must be filed within 90 days after the date of entry of a final order of removal. U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Because petitioner's motion to reopen was filed beyond the 90-day deadline, and petitioner has not established that any recognized exceptions to the time limit applies, the BIA did not abuse its discretion in denying petitioner's motion to reopen as untimely. *See id.*

The statute and regulations provide that a motion to reconsider must be filed within 30 days after the mailing of the BIA's decision. *See* 8 U.S.C. § 1229a(c)(6)(B); 8 C.F.R. § 1003.2(b)(2). We conclude that the BIA did not abuse its discretion in denying the motion to reconsider because petitioner's motion to reconsider was untimely. *See* 8 U.S.C. § 1229a(c)(6)(B); 8 C.F.R. § 1003.2(b)(2).

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.