

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 02 2009

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

ANIEETO SANCHEZ; et al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-74072

Agency Nos. A096-360-243
A096-360-244

MEMORANDUM*

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

Submitted June 16, 2009**

Before: PAEZ, TALLMAN and N.R. SMITH, Circuit Judges.

Anieeto Sanchez and Guadalupe Otamendi, husband and wife and natives
and citizens of Mexico, petition pro se for review of a Board of Immigration
Appeals decision denying, as untimely and without merit, their motion to reopen

* 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).

proceedings to apply for protection under the Convention Against Torture (CAT), following the denial of their application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion, *He v. Gonzales*, 501 F.3d 1128, 1130-31 (9th Cir. 2007), and we deny the petition for review.

Petitioners contend their motion to reopen was timely because there is no time limit for motions to reopen that seek relief under the CAT, and because they only recently became aware of “widespread torture” in Mexico. The motion was untimely because petitioners filed it outside the ninety-day time limit set forth in 8 C.F.R. § 1003.2(c)(2), which does not specifically exclude CAT claims from the time limit. Moreover, the exception to the time limit based on changed country conditions does not apply because petitioners did not present material evidence of changed country conditions that was not available and could not have been presented at the previous proceeding. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *He*, 501 F.3d at 1131-32.

Petitioners also contend the Board erred in concluding that even if the motion to reopen were timely, they did not establish a prima facie case of eligibility for relief under the CAT. We are unpersuaded, because the generalized evidence attached to the motion did not establish petitioners would more likely

than not be tortured if removed to Mexico. *See Nuru v. Gonzales*, 404 F.3d 1207, 1216 (9th Cir. 2005); *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (requiring movant to establish prima facie case for eligibility for CAT relief).

PETITION FOR REVIEW DENIED.