

AUG 03 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>SHANTANU KAR,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p> |
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Nos. 04-72491
04-72497

Agency No. A073-350-981

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

In these consolidated petitions for review, Shantanu Kar, a native of the United Kingdom and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing as untimely his appeal from an

* 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).

immigration judge's ("IJ") decision finding him removable (No. 04-72491), and it's order dismissing his appeal from the IJ's decision denying his motion to reconsider (No. 04-72497). We have jurisdiction under 8 U.S.C. § 1252. We review de novo whether the BIA had jurisdiction over an untimely appeal, *Da Cruz v. INS*, 4 F.3d 721, 722 (9th Cir. 1993), and review for abuse of discretion the denial of a motion to reconsider, *Morales Apolinar v. Mukasey*, 514 F.3d 893, 895 (9th Cir. 2008). We deny the petition for review in No. 04-72491, and we grant the petition for review in No. 04-72497 and remand for further proceedings.

The BIA correctly dismissed Kar's appeal from the IJ's November 6, 2003 decision because Kar's notice of appeal was not filed within 30 days of the IJ's decision. 8 C.F.R. § 1003.38(b); *see also Da Cruz*, 4 F.3d at 723.

The BIA did not have the benefit of our intervening decision in *United States v. Karouni*, 379 F.3d 1139 (9th Cir. 2004) (checking the box on a Form I-9 indicating that an individual is a "citizen or national" of the United States is insufficient to support a conviction under a parallel criminal statute), when it dismissed Kar's appeal from the IJ's denial of his motion to reconsider, and we therefore remand for the BIA to reconsider Kar's appeal.

In 04-72491: PETITION FOR REVIEW DENIED.

In 04-72497: PETITION FOR REVIEW GRANTED; REMANDED.