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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>YINGYING LOU,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-71343

Agency No. A095-584-997

MEMORANDUM*

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

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Yingying Lou, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review

* 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).

for abuse of discretion the denial of a motion to reopen. *Ordonez v. INS*, 345 F.3d 777, 782 (9th Cir. 2003). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Minasyan v. Mukasey*, 553 F.3d 1224, 1229 (9th Cir. 2009). We therefore dismiss Lou's claim regarding the BIA's sua sponte authority.

The BIA did not abuse its discretion in denying Lou's motion to reopen because it was untimely and Lou did not demonstrate that a regulatory exception applies, *see* 8 C.F.R. § 1003.2(c)(3), or that equitable tolling applies, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003). We therefore deny Lou's claim regarding the BIA's timeliness decision.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.