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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MAGDARLINE HERARD,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-73784

Agency No. A079-778-052

MEMORANDUM *

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

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Magdarline Herard, a native and citizen of Haiti, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's decision denying her motion to reopen removal proceedings. We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the agency's denial of a motion to reopen, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005), and we deny the petition for review.

The agency did not abuse its discretion in denying Herard's motion to reopen as untimely because the motion was filed more than five years after the final order of removal, *see* 8 C.F.R. § 1003.23(b)(1), and Herard failed to demonstrate changed circumstances in Haiti to qualify for the regulatory exception to the time limits for filing motions to reopen, *see* 8 C.F.R. § 1003.23(b)(4)(i), *see also Maly v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) ("The critical question is . . . whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution.").

PETITION FOR REVIEW DENIED.