

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FILIP BARANSKI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-70815

Agency No. A027-008-521

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.

Filip Baranski, a native and citizen of Poland, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his motions to reopen and reconsider,

* 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).

and denying his second motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), and we deny the petition for review.

In his opening brief, Baranski fails to address, and therefore has waived any challenge to, the BIA's determination that the IJ lacked jurisdiction over his motions to reopen and reconsider. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

Construing Baranski's appeal as a second motion to reopen based on ineffective assistance of counsel, the BIA did not abuse its discretion in denying the motion because Baranski failed to comply with the requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and the ineffective assistance was not plain on the face of the record. *See Reyes v. Ashcroft*, 358 F.3d 592, 597 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.