

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 22 2010

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

NASIM NAIF MAJDOUB,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

Nos. 05-76191
06-70188

Agency No. A078-188-041

MEMORANDUM*

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

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

In these consolidated petitions for review, Nasim Naif Majdoub, a native of Palestine and citizen of Israel, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider (No. 05-76191) and his motion to reopen (No. 06-70188) proceedings. Our jurisdiction is governed by

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

8 U.S.C. § 1252. We review for an abuse of discretion the agency's denial of a motion to reopen and reconsider. *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005). In No. 05-76191, we dismiss the petition for review, and in No. 06-70188, we deny in part and dismiss in part the petition for review.

With respect to petition No. 05-76191, lack jurisdiction to consider Majdoub's contentions regarding the BIA's June 9, 2005 order, because this petition for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003). In Majdoub's opening brief he fails to challenge the BIA's September 7, 2005 order denying his motion to reconsider. *See Martinez-Serrano v. INS*, 94 F.3d 1256-60 (9th Cir. 1996) (issues not raised and argued in opening brief are waived).

With respect to petition No. 06-70188, the BIA did not abuse its discretion in denying Majdoub's motion to reopen as untimely where the motion was filed more than five months after the BIA's June 9, 2005 order dismissing his appeal. *See* 8 C.F.R. § 1003.2(c)(2).

To the extent Majdoub contends that the BIA should have sua sponte reopened his motion despite its untimeliness, we lack jurisdiction to review this claim because the decision of the agency whether to invoke its sua sponte authority

is committed to its unfettered discretion. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

No. 05-76191: PETITION FOR REVIEW DISMISSED.

No. 06-70188: PETITION FOR REVIEW DENIED in part and DISMISSED in part.