

FEB 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>WIBOWO MULIAWAN KARFENDI; JUNJAR TUTI SIMBOLON,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-71549

Agency Nos. A075-639-957
A075-639-958

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.

Wibowo Muliawan Karfendi and Juniar Tuti Simbolon, natives and citizens of Indonesia, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings. We have jurisdiction

* 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).

under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as untimely where petitioners filed the motion more than three years after the BIA's final order of removal, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must be filed within ninety days of final order of removal), and failed to submit new and material evidence of changed country conditions in Indonesia that would excuse the late filing, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also Malty*, 381 F.3d at 945 (requiring circumstances to 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).

To the extent petitioners contend that the BIA failed to consider some or all of the evidence they submitted, they have not overcome the presumption that the BIA did review the record. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000).

PETITION FOR REVIEW DENIED.