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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BENJAMIN PEREZ-LOPEZ; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-74492

Agency Nos. A096-361-925
A096-361-926

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.

Benjamin Perez-Lopez and Fabiola Perez, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen proceedings to apply for protection under the

* 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).

Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *He v. Gonzales*, 501 F.3d 1128, 1130-31 (9th Cir. 2007), and we deny the petition for review.

The BIA did not abuse its discretion in denying Petitioners’ motion to reopen as untimely because Petitioners filed it more than ninety days after the final order of removal. *See* 8 U.S.C. § 1229a(c)(7)(C)(i). The exception to the time limit based on changed country conditions does not apply because Petitioners did not present material evidence of changed country conditions that was not available and could not have been presented at the previous proceeding. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *He*, 501 F.3d at 1132-33. Moreover, Petitioners failed to include the appropriate application along with their request to apply for CAT relief. *See* 8 C.F.R. § 1003.2(c)(1).

PETITION FOR REVIEW DENIED.

