

FEB 26 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIA ISABEL MAGALLON-CARDENAS, aka:Mary Magallon,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-73074

Agency No. A070-707-441

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.

Maria Isabel Magallon-Cardenas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252.

* 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).

We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Magallon-Cardenas' motion to reopen as untimely where it was filed more than two years after the BIA's April 23, 2003, order. *See* 8 C.F.R. § 1003.2(c)(2).

We lack jurisdiction to address Magallon-Cardenas' contention that intervening case law, *Altamirano v. Gonzales*, 427 F.3d 586 (9th Cir. 2005), effected a fundamental change in the law warranting an exercise of the BIA's *sua sponte* authority to reopen. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002) (this court lacks jurisdiction to review the BIA's decision not to invoke its *sua sponte* authority to reopen proceedings); *see also Matter of G-D-*, 22 I. & N. Dec. 1132, 1134-35 (BIA 1999).

To the extent Magallon-Cardenas challenges the BIA's April 23, 2003, order, we lack jurisdiction because this petition for review is not timely as to that order. *See* 8 U.S.C. § 1252(b)(1); *Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir.

2003). **PETITION FOR REVIEW DENIED in part; DISMISSED in part.**

