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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ZARAIT ALARCON,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 07-72626

Agency No. A079-540-738

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.

Zarait Alarcon, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. Reviewing

* 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).

for abuse of discretion, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), we deny in part and dismiss in part the petition for review.

Construed as a motion to reopen, the BIA did not abuse its discretion in denying Alarcon's motion where the new evidence she presented with the motion did not support prima facie eligibility for cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 600 (9th Cir. 2006).

Construed as a motion to reconsider, the BIA was within its discretion in denying Alarcon's motion where the motion failed to identify any error of fact or law in the BIA's prior decision affirming the immigration judge's order denying cancellation of removal. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc).

To the extent Alarcon challenges the BIA's January 31, 2007, order, we lack jurisdiction because this petition for review is not timely as to that order. *See* 8 U.S.C. § 1252(b)(1); *see Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.