

JUN 07 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LEVAN GALUMASHVILI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-73807

Agency No. A076-373-429

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Levan Galumashvili, a native and citizen of Georgia, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motions to reconsider and reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen or reconsider,

* 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).

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 Galumashvili's motion to reopen because Galumashvili failed to present sufficient evidence of changed circumstances in Georgia to qualify for the regulatory exception to the time and number limitations for filing motions to reopen. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) ("The critical question is . . . whether circumstances 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.").

We lack jurisdiction to review the BIA's refusal to grant Galumashvili's motion to reopen sua sponte. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Galumashvili has waived any challenge to the BIA's order denying the motion to reconsider by failing to raise any arguments in his opening brief related to the BIA's determination that the motion was untimely. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996); *Bazuaye v. INS*, 79 F.3d 118, 120 (9th

Cir. 1996) (per curiam) (declining to reach issue raised for the first time in the reply brief).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.