

JUL 13 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTHA AMPIL KATIGBAK; PETER  
URRUTIA FERNANDEZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70071

Agency Nos. A072-516-414  
A072-401-498

MEMORANDUM\*

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

Submitted June 29, 2010\*\*

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Martha Ampil Katigbak and Peter Urrutia Fernandez, natives and citizens of the Philippines, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen.

---

\* 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, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as untimely where it was filed nearly one year after the BIA's August 14, 2006, order dismissing their underlying appeal, and petitioners failed to demonstrate they qualified for an exception to the filing deadline or for equitable tolling. *See* 8 C.F.R. §§ 1003.2(c)(2)-(3); *Iturribarria v. INS*, 321 F.3d 889, 897-98 (9th Cir. 2003).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

In light of our disposition, we do not reach petitioners' remaining contentions.

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