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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARTUR LAKO; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

Nos. 06-71850
09-73294

Agency Nos. A074-817-827
A074-817-828
A074-817-829

MEMORANDUM*

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

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

In these consolidated petitions for review, Artur Lako and his family, natives and citizens of Albania, petition for review of the Board of Immigration Appeals’ (“BIA”) orders denying their motions 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).

and de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review in No. 06-71850, and we dismiss the petition for review in No. 09-73294.

With respect to 06-71850, the BIA did not abuse its discretion in denying petitioners' second motion to reopen as untimely and numerically barred where the successive motion was filed almost three years after the agency's denial of petitioners' first motion to reopen, *see* 8 C.F.R. § 1003.2(c)(2), and petitioners did not demonstrate the evidence submitted was previously unavailable, *see* 8 C.F.R. § 1003.2(c)(1); *Goel v. Gonzales*, 490 F.3d 735, 738-39 (9th Cir. 2007). It follows that petitioners' due process claims fail. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

With respect to No. 09-73294, 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).

No. 06-71850: PETITION FOR REVIEW DENIED.

No. 09-73294: PETITION FOR REVIEW DISMISSED.