

DEC 27 2010

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

<p>CESAR AUGUSTO MARROQUIN-MORALES; 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>
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No. 08-74349

Agency Nos. A099-405-204
A099-405-205
A099-405-206
A099-405-207
A099-405-208
A099-405-209
A099-405-210
A099-405-211

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Cesar Augusto Marroquin-Morales and family, natives and citizens of Guatemala, petition pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reconsider. Our jurisdiction is governed by

* 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).

8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005), and review de novo due process claims, *Zetino v. Holder*, 622 F.3d 1007, 1013 (9th Cir. 2010). We deny in part and dismiss in part the petition for review.

The BIA acted within its discretion in denying petitioners' motion to reconsider because the motion failed to identify any error of fact or law in the BIA's prior order. *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). Nor did the BIA violate due process in denying as untimely petitioners' late appeal brief. *Zetino v. Holder*, 622 F.3d 1007 at 1013-14.

We lack jurisdiction to review the BIA's March 19, 2006 order dismissing petitioners' appeal from the immigration judge's decision denying asylum, withholding, and relief under the Convention Against Torture because the instant petitioner for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

To the extent petitioners allege ineffective assistance of counsel, we lack jurisdiction to review that contention because petitioners failed to raise it before the

BIA and therefore failed to exhaust their administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.