

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 04 2011

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

REINA RAFAELA ZET,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-71844

Agency No. A073-914-645

MEMORANDUM*

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

Submitted May 2, 2011**
Pasadena, California

Before: SILVERMAN, TALLMAN, and CLIFTON, Circuit Judges.

Reina Rafaela Zet, native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order denying her motion to reopen proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review the denial of a motion to reopen for an abuse of discretion, *Iturribarria v. INS*, 321

* 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).

F.3d 889, 894 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

The BIA acted within its discretion in denying Zet's motion to reopen because it was filed more than ninety days after the BIA's final deportation order, *see* 8 C.F.R. § 1003.2(c)(2), and Zet has not identified any exceptions to the ninety-day time limitation that apply, *see id.* §1003.2(c)(3).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen deportation proceedings under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002) (noting that "the decision of the BIA whether to invoke its sua sponte authority is committed to its unfettered discretion") (emphasis omitted).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.