

DEC 14 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CRISPIN ROJAS and MA DE LOURDES
ROJAS,

Petitioners,

v.

ERIC H. HOLDER JR., Attorney General,

Respondent.

No. 06-75168

Agency Nos. A095-576-451
A095-576-452

MEMORANDUM*
and ORDER

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

Argued and Submitted October 25, 2011
San Francisco, California

Before: **GRABER** and **IKUTA**, Circuit Judges, and **QUIST**, Senior District
Judge.**

Crispin Rojas and Ma De Lourdes Rojas, natives and citizens of Mexico,
petition for review of an order of the Board of Immigration Appeals (“BIA”) denying

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Gordon J. Quist, Senior United States District Judge
for the Western District of Michigan, sitting by designation.

their motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review the denial of a motion to reopen for an abuse of discretion. *Celis-Castellano v. Ashcroft*, 298 F.3d 888, 890 (9th Cir. 2002). Questions of law are reviewed de novo. *Granados-Oseguera v. Mukasey*, 546 F.3d 1011, 1014 (9th Cir. 2008) (per curiam).

The BIA did not abuse its discretion in denying the motion to reopen. Even with the benefit of the 60-day departure period, Petitioners were statutorily ineligible for relief because they failed to depart the United States before their voluntary departure period expired. 8 U.S.C. § 1229c(d)(1); *see Granados-Oseguera*, 546 F.3d at 1016 (holding that the statutory bar on relief precluded the petitioner from relying on ineffective assistance of counsel as an “exceptional circumstance” excusing a failure to depart within the required time).

Petitioners’ prior petition cannot be considered a request for a stay. *See Garcia v. Ashcroft*, 368 F.3d 1157, 1159 (9th Cir. 2004) (order) (“Unlike a motion for stay of removal, a petition for review is not similar to a motion for stay of voluntary departure, nor are the standards governing the two requests for relief.”). While we must afford pro se alien submissions a liberal construction, *Sembling v. Gonzales*, 499 F.3d 981, 990 (9th Cir. 2007), a petitioner must give us something to liberally construe in the first instance. Petitioners failed to do so. Moreover, there is no automatic stay of voluntary departure while an alien pursues a petition for review

before this court. *Desta v. Ashcroft*, 365 F.3d 741, 746 (9th Cir. 2004) (citing *Zazueta-Carrillo v. Ashcroft*, 322 F.3d 1166, 1172 (9th Cir. 2003)).

PETITION FOR REVIEW DENIED.¹

¹ Petitioners' motion for judicial notice is granted.