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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADELA IMELDA NAJA and
FRANCISCO NAJA,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-73637

Agency Nos. A098-450-871

A098-450-872

MEMORANDUM*

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

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Adela Imelda Naja and her husband, Francisco Naja, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reconsider and dismissing their appeal from an immigration judge's ("IJ") decision granting voluntary departure. Our jurisdiction

* 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).

is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, and review de novo claims of constitutional violations in immigration proceedings. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying as untimely petitioners' motion to reconsider because the motion was filed nearly two months after the BIA issued its final decision on April 27, 2009. *See* 8 C.F.R. § 1003.2(b)(2).

Petitioners' contention that the IJ violated due process by not giving them an opportunity to rebut the BIA's hardship determination on remand is unavailing. Remand is not the venue to challenge the BIA's final order denying relief and petitioners did not seek reopening. *Li v. Holder*, 656 F.3d 898, 904, n.1 (9th Cir. 2011).

To the extent petitioners contend that the BIA engaged in impermissible fact-finding in its April 27, 2009, order, we lack jurisdiction because this petition for review is not timely as to the BIA's prior order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.