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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDGAR RENE LOPEZ POCON;  
FLORIDALMA VELIZ HERNANDEZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-71010

Agency Nos.       A070-935-241  
                              A075-580-350

MEMORANDUM\*

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

Submitted August 1, 2013\*\*

Before:       GRABER, WARDLAW, and PAEZ, Circuit Judges.

Edgar Rene Lopez Pocon and Floridalma Veliz Hernandez, natives and citizens of Guatemala, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying Petitioners’ motion to reopen removal proceedings. Our

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\* 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).

jurisdiction is governed by 8 U.S.C. § 1252, and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's decision not to exercise its sua sponte authority to reopen proceedings. *See Sharma v. Holder*, 633 F.3d 865, 874 (9th Cir. 2011).

The BIA did not abuse its discretion in denying Petitioners' motion to reopen. *See Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008) (standard of review). The immigration judge and BIA did consider the evidence and arguments put forth by Petitioners. Thus, there was no due process violation.

The BIA also permissibly concluded that Petitioners had knowingly and intelligently withdrawn their application for asylum and waived their rights to appeal, and did so in exchange for the grant of pre-conclusion voluntary departure. *See Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**