

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 13 2013

XIAO MIN CHEN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-72849

Agency No. A075-642-340

MEMORANDUM*

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

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

Argued August 26, 2013
Pasadena, California

Before: O'SCANNLAIN and CHRISTEN, Circuit Judges, and COGAN, District
Judge.**

Xiao Min Chen, a Chinese national and citizen, petitions for review of a
decision of the Board of Immigration Appeals ("BIA"), In re X-M-C-, 25 I. & N.
Dec. 322 (B.I.A. 2010), which was issued following a remand from this Court. See
Chen v. Mukasey ("Chen I"), 527 F.3d 935 (9th Cir. 2008). In this appeal,

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

** The Honorable Brian M. Cogan, U.S. District Judge for the Eastern
District of New York, Brooklyn, sitting by designation.

Petitioner argues, for the first time, that the Immigration Judge (“IJ”) failed to comply with 8 U.S.C. § 1158(d)(4) at a hearing in Petitioner’s removal proceeding. She contends that although the IJ warned her of the consequence of knowingly filing a frivolous asylum application, the IJ failed to advise her of the privilege of being represented by counsel.

This issue was not raised before the IJ or the BIA, either before or after remand from this Court, and thus, we are deprived of jurisdiction to consider the argument. A failure to exhaust deprives this Court of jurisdiction to consider an issue. Sola v. Holder, 720 F.3d 1134, 1135 (9th Cir. 2013).

In light of this Court’s recent decision in Kulakchyan v. Holder, No. 09-71185, ___ F.3d ___ (9th Cir. 2013), the Court rejects Petitioner’s remaining argument that In re X-M-C- is an unreasonable interpretation of 8 U.S.C. § 1158(d)(6).

PETITION DENIED IN PART, DISMISSED IN PART.