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U.S. COURT OF APPEALS

NOT FOR PUBLICATION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

SETH GYAMFI,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-73770

Agency No. A024-223-643

MEMORANDUM*

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

Submitted November 18, 2015**

Before: TASHIMA, OWENS, and FRIEDLAND, Circuit Judges.

Seth Gyamfi, a native and citizen of Ghana, petitions for review of the Board of Immigration Appeals' ("BIA") decision denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen or reconsider and review de

* 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).

novo claims of due process violations. *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 or violate due process in denying Gyamfi's motion where, construed as a motion to reopen, it was unsupported by material, previously unavailable evidence that could not have been discovered or presented at the former hearing, and where, construed as a motion to reconsider, it was filed beyond the thirty-day deadline. *See* 8 C.F.R. § 1003.2(c)(1) (requirements for motion to reopen); *id.* at (b)(2) (motion to reconsider must be filed within thirty days of final order of removal); *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice to prevail on a due process claim).

We lack jurisdiction to review the agency's decision not to reopen sua sponte. *See Go v. Holder*, 744 F.3d 604, 609-10 (9th Cir. 2014).

In light of our disposition, we need not reach Gyamfi's remaining contentions.

Because Gyamfi did not submit a proposed supplemental opening brief, as required by the court's August 11, 2014, order, we deny his August 8, 2014, motion.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.