

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-15407
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APR 11, 2007 THOMAS K. KAHN CLERK

Agency Nos. A97-640-059
A97-640-060

RICARDO JOSE MARTIN CALDERON,
SADDYS EDIFLOR MANTEROLA CARRASQUEL,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals

(April 11, 2007)

Before BLACK, BARKETT and MARCUS, Circuit Judges.

PER CURIAM:

Ricardo Jose Martin Calderon, and on behalf of his wife, Saddys Ediflor Manterola Carrasquel, (collectively "Petitioners"), have filed a petition for review

of the Board of Immigration Appeals' ("BIA's") order denying their motion to reconsider and reopen its prior order affirming the Immigration Judge's ("IJ's") final order denying asylum, withholding of removal, and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT").

Petitioners, natives and citizens of Venezuela, arrived in the United States on March 21, 2001, and filed an application for asylum and withholding of removal, as well as for protection under the CAT, on September 24, 2003. The IJ denied their application, finding that Petitioners were statutorily ineligible to apply for asylum because their application was untimely, and that Martin's testimony was not credible. On May 31, 2006, the BIA adopted and affirmed the decision of the IJ. Petitioners filed a motion to reconsider and reopen with the BIA, which the BIA denied. Martin and his wife now petition us for review.

Reviewing the record, we cannot conclude that the BIA abused its discretion when it denied Petitioners' motion to reconsider, because the motion merely reiterated the evidence and arguments previously presented to the BIA. 8 C.F.R. § 1003.2(b)(1); see also 8 U.S.C. § 1229a(c)(6). We also cannot conclude that the BIA abused its discretion when it denied Petitioners' motion to reopen because the motion failed to include evidence that was "material and was not available and

could not have been discovered or presented at the former hearing.” 8 C.F.R. § 1003.2(c)(1); see also 8 U.S.C. § 1229a(c)(7).¹

Accordingly, the petition for review is **DENIED**.

¹ Petitioners also argue within their petition that the BIA erred in its May 31, 2006 order affirming the IJ’s order denying asylum, withholding of removal, and CAT claims. Because Petitioners did not file an appeal of the BIA’s May 31, 2006 Order within the requisite time, we have no jurisdiction to consider these arguments.