

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED
May 30, 2012

Lyle W. Cayce
Clerk

No. 11-60408
Summary Calendar

MERSID MEHMEDI-AJVAZOSKA,

Petitioner

v.

ERIC H. HOLDER, JR., U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A077 800 462

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Mersid Mehmedi-Ajvazoska, a native and citizen of Macedonia, petitions this court for review of an order from the Board of Immigration Appeals (BIA) dismissing his appeal from the immigration judge's denial of his motion to reopen his removal proceedings and rescind the in absentia removal order issued against him. The Respondent has filed a motion to dismiss this petition on the ground that this court lacks jurisdiction to review the BIA's decision.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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There is no dispute that Mehmedi-Ajvazoska's motion to reopen, which was his second motion to reopen, was not filed within 180 days after the date of the order of removal. 8 U.S.C. § 1229a(b)(5)(C)(i); 8 C.F.R. § 1003.23(b)(4)(ii). In that motion to reopen, Mehmedi-Ajvazoska sought equitable tolling based upon ineffective assistance of counsel. "[A] request for equitable tolling of a time- or number-barred motion to reopen on the basis of ineffective assistance of counsel is in essence an argument that the BIA should have exercised its discretion to reopen the proceeding sua sponte based upon the doctrine of equitable tolling." *Ramos-Bonilla v. Mukasey*, 543 F.3d 216, 220 (5th Cir. 2008). We lack jurisdiction to review the BIA's decision whether to exercise its discretion to reopen a proceeding sua sponte. *Id.*

Accordingly, the motion to dismiss is GRANTED and the petition for review is DISMISSED.