

MAR 31 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VEENA SANDHU,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-70953

Agency No. A077-374-616

MEMORANDUM\*

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

Submitted March 18, 2009\*\*

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Veena Sandhu, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the

---

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

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

denial of a motion to reopen, *Ghahremani v. Gonzales*, 498 F.3d 993, 997 (9th Cir. 2007), and we grant the petition for review and remand.

The BIA abused its discretion by denying Sandhu's motion as untimely despite her demonstrated due diligence in learning of her former counsel's possible ineffectiveness. *See id.* at 1000 (petitioner's "unbroken efforts to retain competent counsel and file a motion to reopen" demonstrate due diligence). The 90-day filing deadline should have begun to run in September 2006; therefore, Sandhu's motion to reopen, filed on October 19, 2006, was timely. *Id.*

We remand to the BIA for consideration of the merits of Sandhu's ineffective assistance of counsel claim. *Id.* at 1000-01.

**PETITION FOR REVIEW GRANTED; REMANDED.**