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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAUDIA MAGANA-CAMPOS,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 08-70256

Agency No. A076-706-218

MEMORANDUM*

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

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Claudia Magana-Campos, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen and review de novo claims of due process violations. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying Magana-Campos' motion to reopen because the successive motion was filed more than 44 months after the BIA's August 26, 2003 order sustaining the government's underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Magana-Campos failed to establish grounds for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"). Magana-Campos' due process claim therefore fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for due process violation).

PETITION FOR REVIEW DENIED.