

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 21 2009

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

PEDRO DEL TORO-ZEPEDA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74847

Agency No. A096-167-524

MEMORANDUM*

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

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Pedro Del Toro-Zepeda, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction pursuant to

* 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).

8 U.S.C. § 1252. We review for abuse of 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 Del Toro-Zepeda's motion to reopen because the successive motion was filed more than 26 months after the BIA's May 11, 2005 order dismissing the underlying appeal, *see* 8 C.F.R.

§ 1003.2(c)(2) (generally limiting a party to one motion to reopen that must be filed within 90 days of the final administrative decision), and Del Toro-Zepeda failed to establish grounds for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error").

PETITION FOR REVIEW DENIED.