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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FELIX GRANADOS-MARTINEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-71795

Agency No. A070-963-840

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.

Felix Granados-Martinez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order denying appeal from an immigration judge's order denying his motion to reopen based on ineffective

* 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).

assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The agency acted within its discretion in denying Granados-Martinez's motion to reopen as untimely because it was filed more than eleven years after he was ordered deported in absentia, *see* 8 U.S.C. § 1229a(b)(5)(C)(i), and Granados-Martinez failed to establish grounds for equitable tolling, *see Iturribarria*, 321 F.3d 897 (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error," as long as the petitioner acted with due diligence); *see also Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007) (no due diligence where petitioner waited six months after he became suspicious of counsel's fraud to consult with new counsel).

Contrary to Granados-Martinez's contention, the agency considered the new evidence with regard to changed country conditions submitted with Granados-Martinez's motion and acted within its broad discretion in determining that it was insufficient to warrant reopening. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002).

PETITION FOR REVIEW DENIED.