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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CELERINO VELASCO-FLORES, Petitioner, v. ERIC H. HOLDER, Jr., Attorney General, Respondent.	No. 06-73126 Agency No. A073-965-539 MEMORANDUM[*]

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

Submitted August 20, 2009[**]

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Celerino Velasco-Flores, a native and citizen of Mexico, petitions pro se 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

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[*] 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).

RB/Research

to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Velasco-Flores' motion to reopen as untimely because the motion was filed more than two years after the BIA's December 16, 2003, order dismissing his appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Velasco-Flores failed to establish the due diligence required to warrant tolling of the motions deadline, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available to a petitioner who is prevented from filing due to deception, fraud or error, and exercises due diligence in discovering such circumstances).

PETITION FOR REVIEW DENIED.