

AUG 31 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARA LUZ OVALLE LOPEZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 08-70730

Agency No. A070-183-654

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.

Clara Luz Ovalle Lopez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") decision denying her motion to reopen deportation

* 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).

proceedings that were conducted in absentia. Reviewing for abuse of discretion, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), we deny the petition for review.

The record indicates that Ovalle Lopez was personally served with the Order To Show Cause, which warned of the consequences for failing to appear in both English and Spanish, and Ovalle Lopez did not deny receiving notice of her scheduled hearing. The IJ therefore did not abuse his discretion in denying the motion to reopen where the motion was filed more than 12 years after the IJ's June 21, 1995 order, *see* 8 C.F.R. § 1003.23(b)(4)(iii)(A)(1), and Ovalle Lopez failed to establish that she acted with the due diligence required 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”).

In light of our disposition, we do not reach Ovalle Lopez's remaining contentions.

PETITION FOR REVIEW DENIED.