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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CANDIDO VERGARA TRUJILLO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-74512

Agency No. A095-176-672

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.

Candido Vergara Trujillo, 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. Our jurisdiction is governed by

* 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, *Reyes v. Ashcroft*, 358 F.3d 592, 595 (9th Cir. 2004), and review de novo claims of due process violations, *Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Vergara Trujillo’s motion to reopen claiming ineffective assistance of counsel because he did not satisfy the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), and the alleged ineffective assistance is not “obvious and undisputed on the face of the record.” *See Reyes*, 358 F.3d at 597. It follows that Vergara Trujillo has not shown a due process violation. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to establish a due process violation).

We lack jurisdiction to review the BIA’s order summarily dismissing Vergara Trujillo’s appeal because the petition for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.