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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARCO ANTONIO HERRERA-SANCHEZ, a.k.a. Marco Antonio Herrera,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 07-73333

Agency No. A034-033-748

MEMORANDUM*

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

September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges

Marco Antonio Herrera-Sanchez, citizen and native of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) order denying his motion 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).

reopen. We have jurisdiction under 8 U.S.C. § 1252. We deny the petition for review.

The BIA did not abuse its discretion when it denied Herrera-Sanchez's motion to reopen and rejected his argument for equitable tolling. *See Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). First, the BIA correctly denied Herrera-Sanchez's motion as untimely because it was filed almost twelve years after his final deportation order. *See* 8 U.S.C. § 1220a(c)(7). Second, equitable tolling is unavailable to Herrera-Sanchez because he did not establish prejudice from the alleged ineffective assistance of counsel. *See Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003). Herrera-Sanchez's underlying claim for relief is not plausible because his claim for concurrent adjustment of status and an 8 U.S.C. § 1182(c) waiver under *Matter of Gabryelsky*, 20 I&N Dec 750 (BIA 1993) is speculative at best. *See Lin v. Ashcroft*, 377 F.3d 1014, 1027 (9th Cir. 2004); *see* 8 C.F.R. § 1003.2(c)(1).

PETITION FOR REVIEW DENIED.

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