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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>OSWALDO HUMBERTO RUIZ-ORTIZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-75554

Agency No. A070-289-421

MEMORANDUM*

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

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Oswaldo Humberto Ruiz-Ortiz, a native and citizen of Nicaragua, petitions for review of the Board of Immigration Appeals' order denying his motion to reopen removal proceedings conducted in absentia. Our jurisdiction is governed

* 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).

by 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). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Ruiz-Ortiz's motion to reopen as untimely because it was filed in 2006, more than 14 years after the final order of deportation, *see* 8 C.F.R. § 1003.23(b)(1) (motion to reopen must be filed within ninety days of final order of deportation or prior to September 30, 1996), and Ruiz-Ortiz did not show he was entitled to equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline for filing motion to reopen can be equitably tolled when petitioner acts with due diligence).

We lack jurisdiction to review the agency's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Ruiz-Ortiz's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.