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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HARJIT SINGH; KULBIR KAUR,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-75284

Agency Nos. A076-361-298
A076-364-167

MEMORANDUM*

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

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Harjit Singh and his wife Kulbir Kaur, natives and citizens of India, petition for review of the Board of Immigration Appeals' ("BIA") order denying Singh's motion to reopen removal proceedings. We have jurisdiction pursuant to 8 U.S.C.

* 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).

§ 1252. We review for abuse of discretion the denial of a motion to reopen, *Ordonez v. INS*, 345 F.3d 777, 782 (9th Cir. 2003), and we review de novo due process claims, *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

The BIA did not abuse its discretion in denying Singh's motion to reopen for adjustment of status and to reapply for asylum and related relief because Singh's motion was untimely, *see* 8 C.F.R. § 1003.2(c); *Alali-Amin v. Mukasey*, 523 F.3d 1039, 1041-42 (9th Cir. 2008), Singh failed to establish changed country conditions in India or other special circumstances that would warrant reopening, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *Azanor v. Ashcroft*, 364 F.3d 1013, 1021-22 (9th Cir. 2004), and Singh failed to establish his prima facie eligibility for relief, *see Ordonez* 345 F.3d at 784 (to establish a prima facie case, the evidence must reveal a reasonable likelihood that the statutory requirements for relief have been satisfied). It follows that the denial of Singh's motion to reopen did not violate due process. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to prevail on a due process claim).

The BIA also did not abuse its discretion in denying as untimely Singh's motion to reopen based on ineffective assistance of counsel because the record does not present a clear and obvious case of ineffective assistance, *Castillo-Perez*

v. *INS*, 212 F.3d 518, 525-26 (9th Cir. 2000), and Singh failed to establish that he acted with the due diligence required for equitable tolling, *see Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007).

PETITION FOR REVIEW DENIED.