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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HUA XIE,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 07-70109

Agency No. A075-702-736

MEMORANDUM\*

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

Submitted November 17, 2009\*\*

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Hua Xie, a native and citizen of China, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen based on ineffective assistance of counsel. We have jurisdiction pursuant to 8

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\* 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).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and de novo claims of due process violations, including claims of ineffective assistance of counsel in immigration proceedings. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

We agree with the BIA's conclusion that Xie did not demonstrate she received ineffective assistance from former counsel for his failure to file a motion to reopen based on adjustment of status. *See id.* at 793-94 (ineffective assistance of counsel amounts to a violation of due process if "the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case") (internal citation omitted). Xie admits she hired a different attorney to prepare her adjustment of status application, and the record indicates the application was not completed until October 31, 2005, after the expiration of the 90-day motions deadline.

We also agree with the BIA's determination that former counsel's failure to inform Xie of the BIA's August 10, 2005, decision denying reopening did not result in prejudice. *See id.*

Xie's remaining contentions are unavailing.

**PETITION FOR REVIEW DENIED.**