

DEC 07 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SILVIA CRUZ-HERRERA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71135

Agency No. A075-481-526

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.

Silvia Cruz-Herrera, a native and citizen of Mexico, 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

* 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, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying Cruz-Herrera's motion to reopen as untimely because she filed the motion more than eighteen months after the BIA issued its final order, and she failed to establish the due diligence required to warrant tolling of the motions deadline. *See* 8 C.F.R. § 1003.2(c)(2); *Valeriano v. Gonzales*, 474 F.3d 669, 674-75 (9th Cir. 2007) (no due diligence shown where petitioner's attorney delayed filing in order to await receipt of information unnecessary for the filing); *see also Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193-94 (9th Cir. 2001) (tolling limitations period until alien able to obtain "vital information bearing on the existence of a claim"). It follows that the BIA did not violate due process by denying Cruz-Herrera's motion to reopen. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

PETITION FOR REVIEW DENIED.