

DEC 09 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE LUIS MARTINEZ-QUINTERO;
MARIA DE LOS ANGELES
MARTINEZ-GARCIA,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-70424

Agency Nos. A095-405-680
A095-405-681

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.

Jose Luis Martinez-Quintero and his wife, Maria De Los Angeles Martinez-Garcia, natives and citizens of Mexico, petition for review of an order of the Board

* 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).

of Immigration Appeals (“BIA”) denying their motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 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 deny the petition for review.

The BIA did not abuse its discretion in denying Martinez’s motion to reopen as untimely because it was filed over two years after the BIA’s final order of removal, *see* 8 U.S.C. § 1229a(c)(7)(C)(i) (motion to reopen must be filed within ninety days of final order of removal), and Martinez did not show he was entitled to equitable tolling, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (deadline for filing motion to reopen can be equitably tolled “when petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence”).

PETITION FOR REVIEW DENIED.