

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YU LIANG CHEN,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-75252

Agency No. A070-550-712

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.

Yu Liang Chen, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the

* 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).

denial of a motion to reopen, and we review de novo due process claims.

Mohammed v. Gonzales, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Chen's motion to reopen as untimely where it was filed more than two years after the BIA's January 27, 2003, order dismissing his underlying appeal, and Chen failed to demonstrate he qualified for an exception to the time limit or for equitable tolling. *See* 8 C.F.R. §§ 1003.2(c)(2)-(3); *Iturribarria v. INS*, 321 F.3d 889, 897-98 (9th Cir. 2003).

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

In light of our disposition, we do not reach Chen's remaining contentions.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.