

DEC 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANGELITA DAGSIL AGRIPA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-70141

Agency No. A029-418-871

MEMORANDUM*

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

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Angelita Dagsil Agripa, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reconsider and reopen. We have jurisdiction under 8 U.S.C. § 1252. We review

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

for abuse of discretion the denial of a motion to reopen or reconsider, and review de novo claims of due process violations. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny the petition for review.

The BIA did not abuse its discretion in denying Agripa's motion as untimely because the motion was filed almost 10 months after the BIA's December 21, 2004, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(b)(2), (c)(2), and Agripa failed to establish grounds for equitable tolling, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling available where "petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"). It follows that Agripa has not established a due process violation. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to succeed on a due process claim).

PETITION FOR REVIEW DENIED.