

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 30 2009

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

SHRUN LATA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-70784

Agency No. A042-687-739

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.

Shrun Lata, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen alleging ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We

* 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).

review for abuse of discretion the denial of a motion to reopen and de novo claims of due process violations. *Singh v. Gonzales*, 491 F.3d 1090, 1095 (9th Cir. 2007).

We deny the petition for review.

The BIA acted within its discretion in denying Lata's motion to reopen as untimely because it was filed more than two years after the BIA's prior order, *see* 8 C.F.R. § 1003.2(c)(2), and Lata failed to demonstrate changed circumstances arising in Fiji, *see* 8 C.F.R. § 1003.2(c)(3)(ii), or establish grounds for equitable tolling, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error," as long as the petitioner acted with due diligence).

Lata's due process claim is unavailing.

PETITION FOR REVIEW DENIED.