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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EDNA MARIBEL ALVARENGA- VELASQUEZ,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 07-73357

Agency No. A070-956-179

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.

Edna Maribel Alvarenga-Velasquez, a native and citizen of Honduras,
petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying
her motion to reopen deportation proceedings based on ineffective assistance of

* 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).

counsel. We have jurisdiction pursuant to 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). We deny the petition for review.

The BIA did not abuse its discretion in denying Alvargena-Velasquez's motion to reopen as untimely because it was filed more than 10 years after the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and Alvargena-Velasquez failed to establish that she exercised due diligence required to warrant tolling of the filing deadline. *See id.* at 897 (equitable tolling is available to a petitioner who establishes deception, fraud, or error, and exercised due diligence in discovering such circumstances), *see also Singh v. Gonzales*, 491 F.3d 1090, 1095-96 (9th Cir. 2007).

To the extent Alvargena-Velasquez contends that the BIA failed to consider some or all of the evidence she submitted with the motion to reopen, she has not overcome the presumption that the BIA did review the record. *See Ranco-Rosendo v. Gonzalez*, 454 F.3d 965, 966 (9th Cir. 2006).

PETITION FOR REVIEW DENIED.

