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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO DURAN-RAMIREZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73458

Agency No. A077-356-995

MEMORANDUM*

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

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Marco Duran-Ramirez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen proceedings. We have jurisdiction pursuant to 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, *Singh v. Gonzales*, 491 F.3d 1090, 1095 (9th Cir. 2007), and we deny the petition for review.

The BIA acted within its discretion in denying Duran-Ramirez's motion to reopen as untimely because it was not filed within 90 days of the BIA's final decision on his underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Duran-Ramirez failed to establish that he acted with the due diligence required for equitable tolling, *see Singh*, 491 F.3d at 1096-97.

PETITION FOR REVIEW DENIED.