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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HOSSEIN KAFSHDAR GOHARIAN,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71189

Agency No. A075-749-651

MEMORANDUM\*

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

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Hossein Kafshdar Goharian, a native and citizen of Iran, petitions for review of a Board of Immigration Appeals' ("BIA") order denying his second motion to reopen proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review

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\* 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. *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 Goharian's motion to reopen as untimely because it was filed more than three years after the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and Goharian failed to establish that he exercised due diligence to warrant tolling of the filing deadline, *see Iturribarria*, 321 F.3d at 897 (equitable tolling is available to a petitioner who establishes deception, fraud, or error in timely filing, and who exercised due diligence in discovering such circumstances); *see also Singh v. Gonzales*, 491 F.3d 1090, 1095-97 (9th Cir. 2007).

We lack jurisdiction over the BIA's April 2007 order because this petition is not timely as to that order. *See Andia v. Ashcroft*, 359 F.3d 1181, 1183 n.3 (9th Cir. 2004) (per curiam).

**PETITION FOR REVIEW DENIED.**