

FEB 23 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE DE JESUS BAEZA PRECIADO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-73885

Agency No. A074-810-468

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.

Jose de Jesus Baeza Preciado, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”) denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C.

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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).

§ 1252. We review for abuse of discretion the denial of a motion to reopen, *see Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying Baeza’s motion to reopen as untimely because it was filed eight months after the BIA’s final order of removal, *see* 8 U.S.C. § 1229a(c)(7)(C)(i) (motion to reopen must be filed within ninety days of final order of removal), and Baeza did not show he was entitled to equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline for filing motion to reopen can be equitably tolled “when petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence.”); *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (to prevail on ineffective assistance of counsel claim, alien must demonstrate prejudice).

In light of our conclusion, we need not reach Baeza’s remaining contentions.

**PETITION FOR REVIEW DENIED.**