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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GIL EVANGELISTA SADORRA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-72282

Agency No. A098-209-520

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.

Gil Evangelista Sadorra, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his motion to reopen. We have

* 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).

jurisdiction pursuant to 8 U.S.C. § 1252. We review 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 agency acted within its discretion in denying as untimely Sadorra's motion to reopen because it was filed more than 90 days after the IJ's final removal order, *see* 8 C.F.R. §1003.23(b)(1), and Sadorra did not show that he acted with the due diligence required for equitable tolling, *see Singh*, 491 F.3d at 1096-97. It follows that the denial of Sadorra's motion to reopen did not violate due process. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

Sadorra's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED.