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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>AIDEE LETICIA LOSOYA GARCIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-74811

Agency No. A096-061-235

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.

Aidee Leticia Losoya Garcia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8

* 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).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 895-96 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying Losoya Garcia's motion to reopen as untimely because it was filed ninety-one days 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 Losoya Garcia did not show she was entitled to equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline for filing a motion to reopen can be equitably tolled "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence").

PETITION FOR REVIEW DENIED.