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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GAYANE MADATIAN; VAHE GHARAGUZIAN; KRISTINE MADATIAN,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-75372

Agency Nos. A073-915-871
A073-915-872
A073-915-863

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.

Gayane Madatian, her son Vahe Gharaguzian, and her sister Kristine
Madatian, citizens of Armenia, petition for review of the Board of Immigration

* 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).

Appeals' ("BIA") order denying their motion to reopen deportation proceedings based on ineffective assistance of counsel. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as untimely because the motion was filed more than 8 years after the BIA's May 23, 1997, order dismissing their appeal. *See* 8 C.F.R. § 1003.2(c)(2). The BIA acted within its discretion in determining that the evidence submitted with the motion to reopen failed to establish the due diligence required to warrant tolling of the motions deadline. *See Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available to a petitioner who is prevented from filing due to deception, fraud or error, and exercises due diligence in discovering such circumstances).

Petitioners' remaining contentions lack merit.

Petitioners' motion for extension of time to file the reply brief is granted.

The clerk shall file the reply brief received on March 4, 2008.

PETITION FOR REVIEW DENIED.

