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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RICARDO GARCIA YANAGUI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-73991

Agency No. A073-928-003

MEMORANDUM*

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

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Ricardo Garcia Yanagui, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his second motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for

* 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).

abuse of discretion the denial of a motion to reopen. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Garcia Yanagui's second motion to reopen as untimely and numerically barred, where the motion was filed almost four years after the final administrative order, *see* 8 U.S.C.

§ 1229a(c)(7)(C)(i), and Garcia Yanagui did not show he was entitled to equitable tolling, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003).

We lack jurisdiction to review Garcia Yanagui's contention that the BIA should have invoked its sua sponte authority to reopen his proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

We decline Garcia Yanagui's request to remand his case to the BIA for clarification of its order because the BIA's decision is not ambiguous. Garcia Yanagui's contention that the BIA failed to follow its own precedent is meritless.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.