

APR 12 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE MANUEL PEREZ HUERTA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73411

Agency No. A095-179-270

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Jose Manuel Perez Huerta, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. Our jurisdiction is governed by

* 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).

8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen and review de novo constitutional claims, including claims of ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Perez Huerta's motion to reopen as untimely because he filed his motion to reopen nine months after the BIA's July 17, 2006, order, 8 C.F.R. § 1003.2(c)(2), and failed to establish grounds for equitable tolling, *see Iturribarria v. INS*, 321 F.3d 889, 897-98 (9th Cir. 2003).

We lack jurisdiction to review Perez Huerta's claim that the BIA should have granted his motion to reopen to apply for adjustment of status under *Matter of Velarde-Pacheco*, 23 I. & N. Dec. 253 (BIA 2002) (en banc), because he failed to exhaust this claim before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.