

APR 14 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BLANCA ROSA VILLATORO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74780

Agency No. A092-631-298

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.

Blanca Rosa Villatoro, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen exclusion proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252.

* 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).

We review for abuse of discretion the denial of a motion to reopen, and review de novo questions of law. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Villatoro's motion to reopen because the motion was filed more than eleven years after the BIA's January 3, 1996, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Villatoro failed to demonstrate either that a regulatory exception to the filing deadline applied, *see id.* § 1003.2(c)(3), or that she acted with the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling available where "petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence").

We lack jurisdiction to review Villatoro's contention under *Matter of N-B-*, 22 I. & N. Dec. 590 (BIA 1999), because she failed to raise it before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Villatoro's remaining contentions are unpersuasive.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.