

JUN 10 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TEODORO SUSANO-GARCIA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70547

Agency No. A078-000-217

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Teodoro Susano-Garcia, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen, *Iturribarria*

* 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).

v. INS, 321 F.3d 889, 894 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Susano-Garcia's motion to reopen as time- and number-barred because it was his second motion to reopen and it was filed over two years after the BIA's final order of removal, *see* 8 U.S.C. § 1229a(c)(7)(A)-(C) (motion to reopen normally limited to one, and must be filed within 90 days of final administrative order of removal), and Susano-Garcia did not show he was entitled to equitable tolling, *see Iturribarria*, 321 F.3d at 897 (due diligence required for equitable tolling).

Susano-Garcia's contention that the BIA did not sufficiently address his hardship evidence fails because the BIA's time- and number-bar determination was dispositive. *See* 8 U.S.C. § 1229a(c)(7).

We lack jurisdiction to review the BIA's sua sponte determination. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.