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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SUNIL BHANDARI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-70207

Agency No. A095-294-311

MEMORANDUM*

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

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Sunil Bhandari, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the

* 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).

denial of a motion to reopen, and de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Bhandari's second motion to reopen as time- and number-barred where the successive motion was filed nearly four years after the BIA's November 21, 2003, order dismissing his underlying appeal, and Bhandari failed to demonstrate that he qualified for an exception to the time and number limits, or for equitable tolling. *See* 8 C.F.R. § 1003.2(c)(2)-(3); *Iturribarria v. INS*, 321 F.3d 889, 897-98 (9th Cir. 2003). It follows that Bhandari's due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

Bhandari's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED.