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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>YOLANDA GONZALEZ DE ARAIZA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-74762

Agency No. A075-487-636

MEMORANDUM\*

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

Submitted August 10, 2010\*\*

Before: LEAVY, HAWKINS, and IKUTA, Circuit Judges.

Yolanda Gonzalez de Araiza, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review

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\* 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).

the denial of a motion to reopen for abuse of discretion. *See 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 Gonzalez de Araiza's motion to reopen because the motion was filed more than five years after the BIA's February 19, 2002, order, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must generally be filed within 90 days of the final order), and Gonzalez de Araiza failed to establish that she acted with the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline for filing a motion to reopen can be equitably tolled "when a 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 Gonzalez de Araiza's contentions that the BIA erred in severing her case from her husband's case and that she did not receive notice of the dismissal of her prior petition for review because she did not exhaust those contentions before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (this court lacks jurisdiction to review contentions not raised before the agency).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**