

SEP 02 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAUL REYNALDO RIVERA RIVAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
--

No. 08-74436

Agency No. A070-639-224

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.

Raul Reynaldo Rivera Rivas, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his third motion to reopen removal proceedings conducted in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a

* 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).

motion to reopen. *Ituribarria 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 Rivera Rivas' third motion to reopen time- and number-barred. *See* 8 C.F.R. § 1003.2(c)(2). Rivera Rivas filed this motion three years after receiving the denial of his previous motion, and did not demonstrate that he acted with the due diligence required for equitable tolling. *See Ituribarria*, 321 F.3d at 897.

To the extent Rivera Rivas seeks review of the BIA's 1999 determination that he received proper notice of his July 1997, hearing, we lack jurisdiction because this petition for review is not timely as to that order. *See* 8 U.S.C. § 1252(b)(1); *see also Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.