

SEP 22 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RANJEET KAUR,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
--

No. 06-72398

Agency No. A079-245-428

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Ranjeet Kaur, a native and citizen of India, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We

* 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).

review for abuse of discretion the denial of a motion to reopen. *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 concluding that equitable tolling was unavailable for Kaur's claims because she failed to demonstrate diligence where she admitted to knowing that counsel was unprepared at the time of her hearing, but continued to retain his services throughout the appellate process. *See* 8 C.F.R. § 1003.2(c)(2); *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003) (tolling available to individuals who are prevented from filing due to deception, fraud or error, and use due diligence in discovering deception, fraud or error).

PETITION FOR REVIEW DENIED.