

SEP 30 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EVA MARTHA ROSALES DE VEGA;
CONRRADO VEGA PEREZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-71838

Agency Nos. A095-571-326
A095-270-280

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.

Eva Martha Rosales De Vega and Conrrado Vega Perez, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen alleging ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion,

* 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).

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

The BIA did not abuse its discretion in denying petitioners' motion to reopen because it was filed more than three years after the BIA's October 1, 2004, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and petitioners failed to demonstrate that they acted with the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"); *see also Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007).

In light of our disposition, we do not reach petitioners' remaining contentions.

PETITION FOR REVIEW DENIED.