

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MILAGRO DE LA PAZ GARCIA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-72766

Agency No. A070-816-513

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Milagro de la Paz Garcia, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's order denying her motion to reopen proceedings conducted in absentia. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the petition for review.

The agency acted within its discretion in denying as untimely Garcia's motion to reopen because the motion was filed more than twelve years after her final removal order, *see* 8 C.F.R. § 1003.2(c)(2), and Garcia did not demonstrate the due diligence required for equitable tolling, *see Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007). To the extent we have jurisdiction to review the agency's decision not to invoke its sua sponte authority, the agency acted within its broad discretion in declining to reopen.

We lack jurisdiction to review Garcia's ineffective assistance of counsel claim against Attorney Quintanilla, because she did not exhaust that claim prior to bringing this appeal. *See Puga v. Chertoff*, 488 F.3d 812, 815-16 (9th Cir. 2007).

We decline to consider new evidence that was not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996) (en banc).

Garcia's remaining contentions are not persuasive.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.

