

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID ORTIZ-RIOS,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-72800

Agency No. A076-705-250

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.

David Ortiz-Rios, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings based on ineffective assistance of counsel. We have jurisdiction under 8 U.S .C. § 1252. We review for abuse of discretion the denial

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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).

of a motion to reopen. *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 Ortiz-Rios' motion to reopen because the motion was filed more than eight years after the BIA's April 26, 1999 order, *see* 8 C.F.R. § 1003.2(c)(2), and Ortiz-Rios failed to establish that he acted with the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline 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"); *cf. Ghahremani v. Gonzales*, 498 F.3d 993, 1000 (due diligence where alien made "unbroken efforts" to pursue his case).

**PETITION FOR REVIEW DENIED.**