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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>VARDAN PETROSYAN; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-74335

Agency Nos. A076-357-482  
A076-357-483  
A076-357-484

MEMORANDUM\*

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

Submitted December 14, 2010\*\*

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Vardan Petrosyan and family, natives and citizens of Armenia, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen based on ineffective assistance of counsel. We have jurisdiction

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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).

pursuant to 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Singh v. Gonzales*, 491 F.3d 1090, 1095 (9th Cir. 2007), we deny in part and grant in part the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as untimely because the motion was filed more than six years after the BIA's June 11, 2002, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must generally be filed within 90 days of the final administrative order), and petitioners failed to establish grounds for equitable tolling, *see Singh*, 491 F.3d at 1096-97.

Because the BIA failed to address petitioners' request that the BIA exercise its sua sponte authority to reopen proceedings, we remand for the BIA to consider petitioners' request in the first instance. *See Montes-Lopez v. Gonzales*, 486 F.3d 1163, 1165 (9th Cir. 2007).

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part; GRANTED in part; REMANDED.**