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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA VALDOVINOS QUIROZ; ANA
ELIA VALDOVINOS QUIROZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

Nos. 08-70983
08-74549
08-74650

Agency Nos. A075-644-864
A072-530-107

AMENDED
MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted July 19, 2010**
Amended January 28, 2011

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

In these consolidated petitions for review, Maria Valdovinos Quiroz and Ana Elia Valdovinos Quiroz, mother and daughter and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order

* 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).

dismissing their appeal from an immigration judge's ("IJ") decision denying their applications for cancellation of removal, as well as the BIA's orders denying their individual motions to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and de novo due process claims. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003).

In our memorandum decision, filed July 19, 2010, we dismissed the petition for review in No. 08-70983, denied the petition for review in No. 08-74549, granted the petition for review in No. 08-74560, and stayed the mandate and referred these petitions to the Circuit Mediator. During the mediation process, petitioner Ana Elia Valdovinos Quiroz filed a motion to remand her case which respondent opposed. Ana has now filed a motion to withdraw her motion to remand. Respondent has filed a motion to amend our prior decision and disposition of No. 08-74549 and to remand Ana's case to the BIA for consideration of whether the disposition of Maria's ineffective assistance of counsel claims affects Ana's application for cancellation of removal.

To the extent that petitioners challenge the BIA's January 10, 2008, order dismissing their appeal, we lack jurisdiction because the petition for review is not timely. *See* 8 U.S.C. § 1252(b)(1) (petition for review must be filed no later than 30 days after final removal order).

The BIA abused its discretion when it determined that petitioner Maria Valdovinos Quiroz's untimely motion to reopen was not subject to equitable tolling of the motions deadline. *See Iturribarria*, 321 F.3d at 897 (court recognizes tolling of motions deadline during periods where petitioner is prevented from filing because of deception, fraud, or error). In its decision, the BIA noted that Maria was advised by present counsel of a possible ineffective assistance of counsel claim on May 14, 2008, and Maria filed her motion to reopen on that basis on July 30, 2008, less than 90 days after the advice from counsel. *See Iturribarria*, 321 F.3d at 899.

Although Maria's motion did not completely satisfy the requirements of *Matter of Lozada*, 19 I. & N. Dec. 637, 639 (BIA 1988), strict compliance is not required here because the ineffective assistance of counsel is plain on the face of the record. *See Castillo-Perez v. INS*, 212 F.3d 518, 525-26 (9th Cir. 2000) (strict *Lozada* compliance not required where ineffective assistance of counsel is plain on the face of the record). At the initial hearing on remand, Maria's former counsel failed to inform the IJ that her U.S. citizen daughter, who the BIA had earlier noted suffers from "serious" paranoid schizophrenia, would soon turn 21 years old. *See* 8 U.S.C. § 1101(b)(1) (defining "child," in part, as a person under 21). As a result, once the daughter turned 21, she was no longer a "qualifying relative" for Maria,

and the IJ was unable to consider Maria's application for cancellation of removal.
See 8 U.S.C. § 1229b(b)(1).

We therefore remand Maria's case for a prejudice determination, and any other equitable relief the agency may consider appropriate.

We grant the motion of Ana Elia Valdovinos Quiroz to withdraw her opposed motion to remand. We grant respondent's motion to amend and to remand Ana's case to the BIA to consider whether its disposition of Maria's ineffective assistance of counsel claim affects Ana's application for cancellation of removal and any other equitable relief for which Ana may be eligible.

Ana Elia Valdovinos Quiroz's motion to file her untimely reply brief is granted.

In No. 08-70983, PETITION FOR REVIEW DISMISSED.

In No. 08-74549, PETITION FOR REVIEW REMANDED.

In No. 08-74550, PETITION FOR REVIEW GRANTED.