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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VIOLETA CLOTILDE ARTETA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-72144

Agency No. A095-198-937

MEMORANDUM*

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

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Violeta Clotilde Arteta, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and

* 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).

review for substantial evidence findings of fact regarding counsel's performance, *Mohammed v. Gonzales*, 400 F.3d 784, 791 (9th Cir. 2005), and we deny the petition for review.

The BIA did not abuse its discretion in denying Arteta's motion to reopen because she did not establish that her former counsel "failed to perform with sufficient competence." *Mohammed*, 400 F.3d at 793. The BIA did not abuse its discretion by it crediting Arteta's former counsel's statement that she informed Arteta about the BIA's denial of her appeal over Arteta's unsworn statement to the contrary. *See INS v. Wang*, 450 U.S. 139, 142-44 (1981) (agency did not abuse its discretion in denying motion to reopen where it declined to credit unsworn allegations that were conclusory and unbelievable); *cf. Sembiring v. Gonzales*, 499 F.3d 981, 989-90 (9th Cir. 2007) (agency abused discretion in denying motion to rescind in absentia removal order when it required sworn affidavit from pro se alien who presented plausible allegations); *Ghahremani v. Gonzales*, 498 F.3d 993, 999 (9th Cir. 2007) (agency required to accept as true the allegations in petitioner's sworn affidavit where it did not find the allegations to be inherently unbelievable).

PETITION FOR REVIEW DENIED.